S. HRG. 99-358

# FEDERAL DEBT RECOVERY ACT OF 1985

## HEARING

BEFORE THE

## SUBCOMMITTEE ON ENERGY, NUCLEAR PROLIFERATION, AND GOVERNMENT PROCESSES

OF THE

## COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

NINETY-NINTH CONGRESS

FIRST SESSION

ON

## S. 209

TO AMEND CHAPTER 37 OF TITLE 31, UNITED STATES CODE, TO AUTHORIZE CONTRACTS RETAINING PRIVATE COUNSEL TO FURNISH COLLECTION SERVICES IN THE CASE OF INDEBTEDNESS OWED THE UNITED STATES

SEPTEMBER 26, 1985

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# FEDERAL DEBT RECOVERY ACT OF 1985

THURSDAY, SEPTEMBER 26, 1985

U.S. SENATE,
SUBCOMMITTEE ON ENERGY, NUCLEAR PROLIFERATION,
AND GOVERNMENT PROCESSES,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
*Washington, DC.*

The subcommittee met, at 2:08 p.m., in room SD-342, Dirksen Senate Office Building, Hon. Thad Cochran (chairman of the subcommittee) presiding.

Present: Senator Cochran.

## OPENING STATEMENT OF SENATOR COCHRAN

Senator COCHRAN. The subcommittee will come to order. Let me welcome all of you to this hearing, which has been called at the request of my friend, the distinguished Senator from New York, Senator Al D'Amato, who is the author of S. 209, the Federal Debt Recovery Act.

I have an opening statement which describes the legislation and makes some observations about the importance of our doing a better job in collecting bad debts from those who just simply won't pay the Government what they owe. This is not a debt we are talking about that is owed for tax purposes, but this is the wide range of indebtedness that is outstanding to the Federal Government; $19.9 billion in nontax delinquent debts are owed to the United States today. I think the Senator from New York has brought to our attention a very important proposal for doing something effective to reduce this outstanding indebtedness and to collect these debts from folks who owe the debts.

Congressman Jim Moody, who is also here today as a witness before the subcommittee, is the author of a similar bill that has been introduced in the House. We appreciate his being here, as well.

[Senator Cochran's prepared statement follows:]

PREPARED STATEMENT OF SENATOR COCHRAN

The subcommittee will please come to order. I welcome all of you to this hearing of the Subcommittee on Energy, Nuclear Proliferation, and Government Processes of the Governmental Affairs Committee.

The subject of this hearing is S. 209, the Federal Debt Recovery Act, proposed by my friend and colleague, Senator Al D'Amato. This legislation is designed to strengthen the Government's ability to collect delinquent debts by authorizing the Attorney General of the United States to retain private sector counsel to assist in the prosecution of these cases.

Also pending before the subcommittee is the Debt Collection Act Amendments of 1985, which is part of a package of eight bills comprising the administration's Anti-Fraud Enforcement Initiative. This bill would also permit the use of private sector counsel, and representatives of the Department of Justice are on hand to discuss it with us.

The Office of Management and Budget has reported that $19.9 billion in nontax delinquent debts are owed to the United States. $6.2 billion of this amount is now more than 6 years overdue. Our failure to recover these amounts on a timely basis seriously impairs the Government's chances of ever collecting. We cannot continue to permit these debts to go uncollected.

This subcommittee has taken a leading role in seeking improvements in the Government's management of debt collection and was instrumental in the enactment of the Debt Collection Act of 1982. That act improved the Government's debt collection efforts by permitting the Federal Government to charge interest and penalties on delinquent debts, report debtors to credit bureaus, and hire collection agencies.

Senator D'Amato, the administration, and others have called for further action to enhance our ability to litigate these delinquent debt cases.

Appearing before the subcommittee today are representatives of the Department of Justice, the Department of Education, the Georgia State Attorney General's Office, the New York Higher Education Services Corporation, the law firms of Rushing and Guice, and Hayt, Hayt, and Landau, Payco American, G.C. Services Corporation, and the American Collectors Association. Also appearing is the Honorable William G. Broaddus, Attorney General of the State of Virginia, to whom I extend special welcome and appreciation for taking time to provide testimony to the subcommittee on this important issue. I would also like to especially recognize Mr. William L. Guice III, who is from Biloxi, MS. We appreciate the appearance of each of the witnesses today.

I would also like to welcome my colleagues, Senator Al D'Amato, who is the author of S. 209, and Congressman Jim Moody, the author of a similar House bill. I have asked that Senator D'Amato join me on the dais and participate in the questioning of the witnesses. I would like to recognize Senator D'Amato at this time for any statement he wishes to make.

Senator COCHRAN. At this time, I am going to recognize the distinguished Senator from New York and then the Congressman to let them present their testimony to the committee.

We have written statements which, of course, will be included at this point in the record, and we ask you to proceed in any manner you wish.

## TESTIMONY OF HON. ALFONSE D'AMATO, U.S. SENATOR FROM THE STATE OF NEW YORK AND HON. JIM MOODY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WISCONSIN

Senator D'AMATO. Thank you very much, Mr. Chairman. Let me, at the outset, comment you for scheduling this hearing. When we speak to the American people, Mr. Chairman, there is the constant cry for Members of the Congress to get our house in order; to cut the Federal deficit; to do more in terms of fiscal management and fiscal prudence; to implement cost-saving measures like those contained in the Grace Commission's report. We hear of the efforts of OMB to cut back on Federal Government spending and yet, one of the most glaring deficiencies exists in collecting money already due and owing the American taxpayer.

In program after program, such as guaranteed student loans, the loans made by the Small Business Administration, and just about every area where the Government has made loans available for good purposes, we find almost a total indifference to the lack of money being collected.

Indeed, as a result of the poor collection policies that we have had, I would submit that we have actually encouraged people not to pay back their debts.

Mr. Chairman, if one were simply to look at the delinquency statistics that we have compiled, one would instantly appreciate the shocking magnitude of the problem.

When we talk about a loss to the Federal Government of $5.37 billion each year, it is difficult to understand exactly what that means. But, if we break it down to daily statistics, it takes on more obvious significance.

Moneys lost due to the tolling of the statute of limitations is the most shocking result of the Federal Government's failure to collect moneys that are due and owing. It means that after 6 years, when the statute of limitations has expired, we have effectively lost the ability to collect these delinquent moneys. Thus, on a daily basis, we lost $6.7 million of money due and owing to the taxpayers of this Nation. That is $6.7 million lost every 24 hours to the statute of limitations.

Increased costs due to Government borrowing is another result of this problem. When we lost those moneys that we otherwise could have collected, we have to borrow $5.8 million per day to offset that loss. In addition, the loss of interest not paid to the Federal Government is $2.2 million per day. A grand total of $14.7 million a day. On an annual basis, we are losing more than $5 billion because of our failure to address this issue.

Mr. Chairman, let me emphasize that when this issue first came before this committee, the amount of nontax debt owed to the Government was about $16 billion. At the start of fiscal year 1985, it was $19.9 billion, an increase of 21 percent. Today, the amount is even greater—more than $20 billion. The time for action is clear; it is now. The legislative proposal that we have put forth has the support of the Justice Department and of OMB. It passed the Senate by a vote of 96 to 1 during the 98th Congress.

I hope, Mr. Chairman, that this legislative initiative will again be passed speedily in the Senate and sent over to the House. Our good colleague, Congressman Moody, is shepherding the bill through the House where it now has more than 20 cosponsors. I hope that collectively and individually, we are able to signal to the House that it is time for them to act to protect the American taxpayer. Unless we act now, we are really breaking faith with what can and should be done to collect these moneys.

Mr. Chairman, let me thank you for holding these hearings. I hope that we can speedily report this bill to the floor and gain the Senate's overwhelming approval once again. If we are successful, it will send a message to the House of Representatives that this is a way to collect those dollars due and owing to the taxpayer and to reduce the deficit in a meaningful way.

Thank you, Mr. Chairman.

Senator COCHRAN. Thank you, Senator. Let me invite you, Senator D'Amato, to come to the committee table if you choose for the balance of the hearing or after the testimony of the Congressman, whatever pleases you, to assist in any way you like in questioning witnesses.

Congressman, we are glad you are here. The gentleman from Wisconsin, Congressman Jim Moody is, as I said, a sponsor of a similar bill that is pending in the House of Representatives. We are glad you are here to add to our hearing today. You may proceed.

Representative MOODY. Thank you very much, Mr. Chairman. It gives me great pleasure to be before you and to appear with my colleague, Senator D'Amato, in this important effort. I applaud him for his tireless efforts to pass S. 209 and would like to point out that companion bill, H.R. 979, has, as he indicated, received a broad array of support from my colleagues in the other body.

I am certain with your support, we can launch this bill and get it on its way. The need for the Federal Debt Recovery Act is clear. The GAO has reported that debts owed the Government are enormous and growing each year. According to the Office of Management and Budget, almost $20 billion in nontax delinquent debts now are owed to the U.S. Government and its taxpayers.

It is interesting to note that $6.2 billion of that debt is more than 6 years overdue, and that the statute of limitation is preventing us, each day, from collecting debt that is owed. With the annual Federal deficit approaching $200 billion, letting these debts go uncollected would be highly irresponsible.

Why don't we simply continue current practice, business as usual, and let the Justice Department handle it? First, I think it is obvious that there is a severe backlog at the Justice Department. In 1984, more than 124,000 individual debt collection cases were backlogged at the Department of Justice, while another 600,000 cases are, in fact, ripe for litigation. But the Department of Justice is unable to pursue these cases. The Department of Justice attorneys simply do not have the time to handle this huge caseload.

Second, does it really make sense for the Department of Justice to be spending their time collecting $300, $600, $900, $1,200, and $1,400 debts when, in fact, we want them to be investigating and prosecuting crimes such as narcotics offenses, fraud, white-collar crime, tax evasion, antitrust violations, and pollution violations.

So on both case overload grounds and on cost effectiveness grounds, I think we should let private agencies get involved.

The threats of subsequent litigation, would, in fact, substantially magnify debt collection by private agencies. We already have private agencies in the game, but they cannot bring cases to litigation. That toothless tiger is well known.

The legislation that Senator D'Amato and I are proposing would fill a gap by allowing the Attorney General, in addition to contracting with private debt collection agencies, to also contract with law firms on a contingency fee basis to pursue these debts. However, the Attorney General would retain the authority to terminate a contract if it found not to be in the public interest. Further, the Fair Debt Collection Practices Act already on the books would assure that debtors received fair treatment.

Finally, the law retains competition among the law firms and does not permit sweetheart arrangements. Federal agencies must have the ability to use private law firms directly to pursue the massive debts presently owed to the Federal Government. Billions of dollars are lost due to the time constraints imposed by the stat-

ute of limitations; approximately $6.7 million each day. These debtors should not be allowed to avoid paying the money they owe the Nation and the taxpayers.

Collections made in this manner would: One, reduce the Federal deficit as indicated; and two, protect the future of important Federal programs.

I would add that this proposal would add no additional Federal U.S. bureaucracy to the ranks.

Finally, Mr. Chairman, I would like to, again, thank you for this opportunity to appear before you and the committee and again to salute my colleague, Senator D'Amato, in this important effort.

Thank you.

Senator COCHRAN. Thank you, Congressman.

I understand that the bill that you are presenting to the committee today doesn't require any appropriation or funding by the Congress. This is a bill that actually is going to have just the opposite effect; it is going to bring money into the Government. So payments to those who would be retained for collection purposes would be made from the sums collected.

Is that in your bill, too, Congressman?

Representative MOODY. Yes, sir. The attorneys would be paid on a contingency fee basis, and therefore, there would be no need to appropriate any sums from the U.S. Treasury.

Senator COCHRAN. We appreciate very much your being here and leading off as witnesses before the committee's hearing today. We thank you for the leadership you are giving on this issue.

Representative MOODY. Thank you.

Senator COCHRAN. Thank you very much.

Senator D'AMATO. Thank you, Mr. Chairman.

[Senator D'Amato's prepared statement follows:]

STATEMENT OF SENATOR ALFONSE M. D'AMATO
HEARING ON S. 209, THE FEDERAL DEBT RECOVERY ACT
COMMITTEE ON GOVERNMENTAL AFFAIRS
SUBCOMMITTEE ON ENERGY, NUCLEAR PROLIFERATION
AND GOVERNMENT PROCESSES
SEPTEMBER 26, 1985

MR. CHAIRMAN, I AM DELIGHTED TO TESTIFY BEFORE YOU REGARDING S. 209, THE FEDERAL DEBT RECOVERY ACT. THIS BILL WILL VASTLY IMPROVE THE FEDERAL GOVERNMENT'S DEBT COLLECTION EFFORTS BY PERMITTING THE JUSTICE DEPARTMENT TO CONTRACT WITH PRIVATE ATTORNEYS TO PROVIDE LEGAL SERVICES IN CONNECTION WITH NON-TAX DELINQUENT DEBTS. I COMMEND YOU FOR CALLING THIS HEARING AND FOR CONTINUING THE SUBCOMMITTEE'S WORK DURING PREVIOUS YEARS ON FEDERAL DEBT COLLECTION.

LAST YEAR, I COSPONSORED LEGISLATION IDENTICAL TO S. 209 TO HELP RECOVER DELINQUENT DEBTS OWED TO THE FEDERAL GOVERNMENT. THAT LEGISLATION, S. 1668, WAS OVERWHELMINGLY PASSED BY THE SENATE ON JULY 25, 1984 BY A VOTE OF 96 TO 1. UNFORTUNATELY, THE HOUSE WAS UNABLE TO COMPLETE ACTION ON COMPANION LEGISLATION AND THE BILL DIED AT THE END OF THE 98TH CONGRESS.

I REINTRODUCED THE LEGISLATION AS S. 209 ON JANUARY 21, 1985 BECAUSE THE STAGGERING AMOUNT OF DELINQUENT DEBT CONTINUES TO RISE. IN 1983, WHEN I TESTIFIED BEFORE THIS SUBCOMMITTEE, THE AMOUNT OF DELINQUENT NON-TAX DEBT OWED TO THE FEDERAL GOVERNMENT WAS $16 BILLION. BY THE START OF THIS FISCAL YEAR, THAT AMOUNT HAD RISEN TO MORE THAN $19.9 BILLION - AN INCREASE OF 21%. TODAY, IT IS EVEN GREATER. THE NEED FOR PROMPT CONGRESSIONAL ACTION IS MORE PRESSING THAN EVER.

EVERY DAY THE TAXPAYERS OF OUR NATION ARE LOSING MORE THAN $14.7 MILLION, OR OVER $5 BILLION EVERY YEAR, BECAUSE OF BAD FEDERAL LOANS. IT IS SHOCKING TO CONSIDER THAT EACH DAY $6.7 MILLION IS LOST AS THE STATUTE OF LIMITATIONS FOR COLLECTING THESE DEBTS EXPIRES, $5.8 MILLION IS LOST DUE TO ADDITIONAL BORROWING COSTS INCURRED BY THE FEDERAL GOVERNMENT, AND $2.2 MILLION IS LOST IN UNPAID DEBTOR INTEREST.

THE FEDERAL GOVERNMENT MUST NOW REFER DEBTS REQUIRING LEGAL ACTION TO THE DEPARTMENT OF JUSTICE. THE JUSTICE DEPARTMENT LACKS THE STAFF AND THE RESOURCES NECESSARY TO PROCESS THE MAMMOUTH VOLUME OF CASES REQUIRING LITIGATION. THERE ARE NOW MORE THAN 32,863 DELINQUENT EDUCATION DEPARTMENT DEBTS, VALUED AT MORE THAN $92.6 MILLION, AWAITING ACTION BY JUSTICE. IN ADDITION, AT THE END OF AUGUST, 1985, EDUCATION HAD MORE THAN 1 MILLION OVERDUE DEBTS OUTSTANDING. IT IS SIMPLY IMPOSSIBLE FOR OVERBURDENED UNITED STATES ATTORNEYS TO HANDLE SUCH A LARGE NUMBER OF CASES. THE POTENTIAL CASE LOAD IS EVEN MORE OVERWHELMING WHEN WE CONSIDER THAT EDUCATION

ACCOUNTS FOR ONLY A SMALL PROPORTION OF THE TOTAL NON-TAX FEDERAL DELINQUENT DEBTS.

IT IS QUESTIONABLE WHETHER THE DEPARTMENT OF JUSTICE SHOULD HAVE TO TREAT DEBT COLLECTION AS ONE OF ITS TOP PRIORITIES. CERTAINLY, IT IS IMPORTANT TO RECOVER MONIES DUE AND OWING TO THE FEDERAL GOVERNMENT, BUT I BELIEVE THAT JUSTICE DEPARTMENT ATTORNEYS ARE BEST EMPLOYED AS CRIME FIGHTERS, RATHER THAN AS BILL COLLECTORS. S. 209 WILL HELP RETURN TENS OF MILLIONS OF DOLLARS TO THE U.S. TREASURY WHILE ENABLING JUSTICE TO DEVOTE ITSELF TO ITS MORE CRITICAL WORK IN FIGHTING DRUG TRAFFICKING AND ORGANIZED CRIME AND MANY OTHER SERIOUS FEDERAL CRIMES.

THE DEBT COLLECTION ACT OF 1982 WAS THE FIRST STEP IN CRACKING DOWN ON DEBTORS WHO DO NOT TAKE SERIOUSLY THEIR OBLIGATION TO REPAY THE FEDERAL GOVERNMENT. THAT ACT PERMITTED FEDERAL AGENCIES TO CHARGE INTEREST AND PENALTIES ON DELINQUENT DEBT, GARNISH THE WAGES OF FEDERAL WORKERS OWING MONEY TO THE FEDERAL GOVERNMENT, AND HIRE PRIVATE COLLECTION AGENCIES.

COLLECTION AGENCIES ARE VITAL TO THE GOVERNMENT'S EFFORT TO COLLECT THESE DELINQUENT DEBTS. HOWEVER, AS NOTED IN A 1983 GAO STUDY, COLLECTION AGENCIES EFFORTS ARE "HAMPERED BY THEIR INABILITY TO THREATEN DEBTORS WITH LEGAL SUITS." WITHOUT THE ADDED TOOL OF LITIGATION, COLLECTION AGENCIES EMPLOYED BY THE EDUCATION DEPARTMENT HAVE ONLY BEEN ABLE TO ACHIEVE A COLLECTION RATE OF 6.6%. IN THE PRIVATE SECTOR, WHERE THE

THREAT OF LITIGATION IS MEANINGFUL, THE COLLECTION RATE FOR SIMILAR DEBTS WOULD BE AS HIGH AS 30% TO 40%.

S. 209 IS THE PRODUCT OF EXTENSIVE DISCUSSION AND DELIBERATION WITH THE JUSTICE DEPARTMENT, THE EDUCATION DEPARTMENT, AND MANY OTHERS WITH EXPERTISE IN THE FIELD OF DEBT COLLECTION. IT REFLECTS A COMPROMISE REACHED WITH JUSTICE WHEREBY JUSTICE WAS GIVEN THE POWER TO CONTRACT WITH PRIVATE LAW FIRMS FOR LEGAL SERVICES IN CONNECTION WITH DEBT COLLECTION. FURTHER, WE AGREED THAT THE HEADS OF FEDERAL AGENCIES COULD THEN REFER CASES DIRECTLY TO THE LAW FIRMS HIRED BY JUSTICE.

FEDERAL AGENCIES SHOULD NOT BYPASS THE COST-EFFECTIVE USE OF COLLECTION AGENCIES IN RECOVERING DELINQUENT DEBT. LITIGATION AGAINST RECALCITRANT DEBTORS IS ONLY INTENDED TO BE USED AS A TOOL OF LAST RESORT. IN ADDITION, S. 209 WAS CRAFTED TO PERMIT FEDERAL AGENCIES TO HAVE THE OPTION TO DECIDE WHETHER OR NOT A CONTRACT WITH A COLLECTION AGENCY WOULD GIVE THE COLLECTION AGENCY THE POWER TO MAKE DIRECT REFERRALS TO LAW FIRMS RETAINED BY JUSTICE. NOTHING IN THE BILL PRECLUDES SUCH CONTRACTS FROM BEING EXECUTED.

IN ORDER TO SAFEGUARD THE PUBLIC INTEREST, THE BILL AUTHORIZES THE JUSTICE DEPARTMENT TO RECALL ANY CLAIM REFERRED TO PRIVATE COUNSEL. THIS AUTHORITY IS INTENDED TO BE RESERVED

FOR EXCEPTIONAL, RATHER THAN ROUTINE, CASES. JUSTICE MAY ALSO TERMINATE CONTRACTS WITH PRIVATE LAW FIRMS IF SUCH TERMINATION IS IN THE PUBLIC INTEREST. S. 209 ALSO STATES THAT THE HEADS OF FEDERAL AGENCIES SHALL HAVE THE POWER TO RESOLVE DISPUTES REGARDING CLAIMS, COMPROMISE CLAIMS, OR TERMINATE COLLECTION ACTION ON CLAIMS. PRIVATE ATTORNEYS MUST ALSO SUBMIT MONTHLY STATUS REPORTS, BOTH TO THE ATTORNEY GENERAL AND TO THE HEAD OF THE FEDERAL AGENCY REFERRING CLAIMS UNDER THE CONTRACT.

THE ATTORNEY GENERAL IS REQUIRED TO SUBMIT TO CONGRESS AN ANNUAL REPORT ON THE JUSTICE DEPARTMENT'S ACTIVITIES TO RECOVER DELINQUENT DEBTS. AN ANNUAL AUDIT OF JUSTICE'S ACTIONS TO RETAIN PRIVATE COUNSEL UNDER THIS BILL IS ALSO REQUIRED TO BE PERFORMED BY THE COMPTROLLER GENERAL AND SUBMITTED TO CONGRESS. IN ORDER TO ENSURE JUSTICE'S PROMPT ACTION IN IMPLEMENTING THE PROVISIONS OF THE BILL, THE ATTORNEY GENERAL MUST MAKE A REPORT TO CONGRESS WITHIN 60 DAYS AFTER ENACTMENT. THE MAGNITUDE OF THE OUTSTANDING DELINQUENT DEBT MAKES IT ESSENTIAL THAT NO MORE TIME BE LOST IN RECOVERING THESE MONIES.

IT SHOULD BE CLEARLY UNDERSTOOD THAT S. 209 DOES NOT REQUIRE CONGRESS TO APPROPRIATE A SINGLE PENNY TO IMPLEMENT ITS PROVISIONS. PAYMENTS TO ATTORNEYS RETAINED BY THE JUSTICE DEPARTMENT ARE TO BE MADE OUT OF PROCEEDS COLLECTED. IT IS ANTICIPATED THAT JUSTICE WILL NEGOTIATE CONTINGENT FEE ARRANGEMENTS WITH PRIVATE COUNSEL. THE AMOUNT OF THE FEE MAY NOT EXCEED THE FEE THAT COUNSEL IN THE SAME GEOGRAPHIC AREA

TYPICALLY CHARGE CLIENTS FOR DEBT COLLECTION LEGAL SERVICES. FACTORS TO BE TAKEN INTO ACCOUNT IN DETERMINING WHETHER A FEE IS REASONABLE INCLUDE SUCH ITEMS AS THE AMOUNT, AGE, AND NATURE OF THE INDEBTEDNESS, AND WHETHER THE DEBTOR IS AN INDIVIDUAL OR A BUSINESS ENTITY. CONTRACTS MAY INCLUDE ALL TERMS AND CONDITIONS DEEMED NECESSARY BY THE ATTORNEY GENERAL. THE BILL ALSO REQUIRES THE ATTORNEY GENERAL TO USE HIS BEST EFFORTS TO RETAIN MORE THAN ONE PRIVATE COUNSEL IN EACH JUDICIAL DISTRICT.

UNDER THE CAREFUL SUPERVISION OF THE JUSTICE DEPARTMENT, AND SUBJECT TO PROVISIONS WHICH WOULD PROTECT THE RIGHTS OF DEBTORS, THE USE OF PRIVATE COUNSEL WILL GREATLY ENHANCE THE ABILITY OF THE FEDERAL GOVERNMENT TO RECOVER OUTSTANDING DEBT. MANY INDIVIDUALS OWING MONEY TO THE FEDERAL GOVERNMENT ARE MAKING A CALCULATED DECISION NOT TO REPAY THEIR LOANS, CONVINCED THAT THE FEDERAL GOVERNMENT HAS NEITHER THE INCLINATION NOR THE CAPACITY TO RECOVER THE DEBT. THEY HAVE A "TAKE THE MONEY AND RUN" MENTALITY. THIS CHEATS THE TAXPAYER AND, IN THE LONGRUN, THREATENS THE VIABILITY OF MANY WORTHWHILE FEDERAL PROGRAMS SUCH AS THE STUDENT FINANCIAL ASSISTANCE PROGRAMS, WHICH ARE ESPECIALLY IMPORTANT TO THE LOWER AND MIDDLE CLASS FAMILIES OF THIS NATION. WE MUST REVERSE THAT ATTITUDE AND SEND A CLEAR MESSAGE THAT WE MEAN BUSINESS.

THIS BILL WILL CREATE MORE EFFICIENT, COST-EFFECTIVE DEBT COLLECTION BY THE FEDERAL GOVERNMENT. IT ALSO WILL HELP RESTORE THE GOOD FAITH AND INTEGRITY WHICH SHOULD BE PRESENT IN SUCCESSFUL DEBTOR-CREDITOR RELATIONSHIPS. I AM ALSO PLEASED

THAT S. 209 HAS THE SUPPORT OF THE DEPARTMENT OF JUSTICE, THE DEPARTMENT OF EDUCATION, AND OMB. JUSTICE'S FIRM SUPPORT FOR THIS BILL IS EVIDENCED BY A SIMILAR PROPOSAL WHICH IT DRAFTED INCORPORATING THE ESSENTIAL FEATURES OF S. 209 WITH SOME TECHNICAL DIFFERENCES.

I URGE THE SUBCOMMITTEE TO ACT EXPEDITOUSLY TO FAVORABLY REPORT OUT THIS VITAL LEGISLATION.

THANK YOU, MR. CHAIRMAN.

Senator COCHRAN. We now have a panel of witnesses representing the Federal Government, the Department of Justice, and the Department of Education. We have Robert N. Ford, who is Deputy Assistant Attorney General, Office of Consumer Litigation at the Department of Justice and Richard A. Hastings, Director of the Debt Collection and Management Assistance Service of the Department of Education.

We appreciate very much your being with us and responding to our request to testify at the hearing. We have a written statement which has been submitted to the committee by Mr. Ford, and it will be made a part of the record in full, so that any summary comments or abbreviated statements that you can provide to the committee, Mr. Ford, would be appreciated.

You may proceed.

**TESTIMONY OF ROBERT N. FORD, DEPUTY ASSISTANT ATTORNEY GENERAL, CIVIL DIVISION, U.S. DEPARTMENT OF JUSTICE; AND RICHARD A. HASTINGS, DIRECTOR, DEBT COLLECTION AND MANAGEMENT ASSISTANCE SERVICE, DEPARTMENT OF EDUCATION**

Mr. FORD. Thank you very much, Mr. Chairman. It is a pleasure to be here this afternoon to address the subcommittee about the two bills pending before it, Senator D'Amato's bill, S. 209 and the administration bill, S. 1658, which is a part of the administration's antifraud package that was introduced by Senator Roth.

The two bills are very similar. The administration's bill is, of course, a part of the President's major management improvement program consisting of eight antifraud legislative initiatives that the Attorney General announced last week.

Aggressive collection of debts owed to the United States is a very important part of that program of the administration. The President himself, in a radio address just last summer, said that debt collection was important when he said to the people, "With support from the Congress, we're taking a tough new stance on collections. We're not singling out any individuals or groups, but we can, we must, and we will go after the cheaters who profit from the system at the expense of honest citizens who live by the rules."

The Attorney General asked my boss, Richard Willard, the head of the Civil Division, to coordinate the Department's collection activity. We have been at this for about 3½ or 4 years now. But actually, it is the 93 U.S. attorneys throughout the country who are at the front lines of this effort.

If I may, I would like to bring the record up to date as to how good a job they have done. Since 1982, when we started keeping figures on it, through the end of August of this year, August 31, 1985, the U.S. attorneys have collected $1.3 billion in cash deposited into the Treasury.

One of the major efforts has been with the claims of the Department of Education; we have had a special project running with the Department of Education this year. The figures that I have, and I believe that the Department of Education agrees, show that up until January 1985, U.S. attorneys were collecting an average of $300,000 a month on defaulted education loans.

When the project started and Education started sending us more and more of the cases, from February through May 1985, those collections rose to an average of $700,000 a month. In June, for the first time, they went over $1 million, and the last figures I have for July show about $2.2 million in cash was collected by the U.S. attorneys on these educational defaults in July 1985.

We have gotten a little over 16,000 of these debts from education this fiscal year. They average around $3,100 apiece. The U.S. attorneys have been able to take some significant action on 71 percent of those debts. They filed over 9,000 collection lawsuits. Over 5,000 of the people whom they have sued are in paying status. Some 2,600 cases have been closed. They have collected $1.6 million in those cases, which is about 30 percent of the face value of those cases.

I would like to note here, if I may, Mr. Chairman, that there is a misconception, I think, to some extent that all of these people in default and in debt to the Department of Education are graduates of Harvard or Yale or—I hope not Old Miss, but [laughter]—institutions of higher learning. It is simply not so. A significant number of these debtors, and I think we must keep this in mind, are people who went to trade schools. They may have gone to barber school or to beauty school or, in fact, took correspondence courses and became disenchanted with the subjects that they took or were not able to find the jobs waiting for them when they completed these courses.

Though there are some doctors and some lawyers and some stockbrokers that are riding around in their Mercedes and BMW's, they are not all that way, by any means. The point is, these debts may not necessarily be of the same quality of the normal commercial debts, the people who owe American Express and Visa and Bank Americard money.

But in any event, back to the summary of the statement, it says in the printed statement that the greatest accomplishment was setting up the lockbox direct deposit system, and that certainly was a significant accomplishment.

However, in my own personal opinion, I think the best thing we have ever done was create a cadre of debt collection specialists. We went out and looked into the 94 U.S. attorneys' office and found a

half a dozen or so of the people who did the best job in running the collections operation in their districts. We got those people to volunteer to spend half of their time going around the country helping other people and offices who had problems.

I think that that debt collection specialist project with half a dozen of those debt collection technicians is the best thing we have ever done.

The direct deposit system is significant. So far this year, some $311 million in cash has flowed through that lockbox in Atlanta, deposited directly by the U.S. attorneys and the litigating divisions in Washington.

Of that, $285 million has already been transferred to the agencies. The advantage to that system, of course, is that we get the money into the Treasury more rapidly so that the Government does not have to borrow funds.

We had a study that showed us that $1.2 million a year in interest on the float could have been been saved by getting this money more rapidly into the system, and that was what led us to institute, through the cooperation of Treasury and OMB, the lockbox system.

The Debt Collection Act of 1982, which was, I believe, conceived and hammered out in this subcommittee and eventually passed, has enabled the agencies to improve their collection techniques a great deal. The agencies will use, for the first time this year, a provision in the 1984 Deficit Reduction Act that will enable offsets against tax refunds that would be due to taxpayers next year who are in default on obligations to the Federal Government.

All anticipate that that will be a remarkable collection device.

Turning now to the specific bills, S. 209 and S. 1658, the bills are essentially the same. As the Congressman said, they would authorize the Attorney General to retain private counsel in such districts and for such classes of cases that he deems appropriate. Once the counsel is retained, the creditor agencies could refer cases directly to them.

There are periodic reporting requirements, and the bill does authorize the Attorney General to contract so that the counsel would be paid out of the proceeds of what they collect.

Obviously, the counsel would have to comply with the Fair Debt Collection Practices Act.

The administration bill permits the agencies to refer, as I said, cases directly to the counsel subject to the approval of the Attorney General. We don't anticipate any problems with that.

S. 209 contains a provision permitting the head of the agency which refers a claim to the private debt collection attorneys to compromise the claim or terminate the collection action on the claim. We have no opposition to this, because we understand that not infrequently, the agencies have reasons why they will want to compromise the claim other than perhaps a strict legal reason.

Unlike S. 209, however, the administration's proposal would preclude judicial review of the Attorney General's selection of the counsel to handle this litigation. It would ensure that when such contracts were let, they could not be challenged in bid protest suits in the claims court or the various district courts through the United States.

We put this in the administration's bill, Mr. Chairman, quite frankly, because we believe that lawyers are a particularly litigious lot, and we anticipant that if the legislation passes without predcluding judicial review, we will have more Department attorneys spending more time trying to defeat the temporary restraining orders and preliminary injunctions which will be brought claiming that the contracts were not properly awarded than we will having people out there collecting debts.

Of course, our selection of private counsel will be guided by carefully developed criteria. We will look for licensed members of the bar; members in good standing of State bars; we will look for people with records of success in debt collection. I would think that we would give great weight to successful collection efforts for State and local communities. Price, obviously, will enter into it. Having up-to-date, automated systems is very important and a trained staff of collections technicians, because most of this work really, though we talk about debt collection litigation, is not carried on by lawyers. Very few of these debtors show up to contest the suits filed against them. They are mostly default judgments, and once you get the judgment, that is when the collection action begins. We must, then, go about collecting the judgment.

We would also look to the reputation of the law firms for responsible practices. We would publicize our needs to local and state bar associations; to the Commercial Law League of America; the American Bar Association and those kinds of organizations to let people know that we are interested in soliciting interested and qualified firms.

There is another difference between the administration's bill and S. 209 in that S. 209 would amend the Debt Collection Act to permit the Internal Revenue Service to utilize private debt collection agencies and private counsel.

It is strongly opposed by the Internal Revenue Service, and the administration urges the committee not to repeal the exemption for tax debts contained in 31 U.S.C. 3718(d).

Tax collection is a core function of Government for which contracting out is inappropriate, we believe, plus the fact that IRS is very efficient as a debt collector, and eventually, collects more than 99 percent of the taxes assessed.

Finally, Mr. Chairman, I had a conversation with Joe diGenova, the U.S. attorney in the District of Columbia yesterday, and I think by inadvertance, there is a group of people right here under our nose who have been left immune from our debt collection processes. Those are the employees of the government of the District of Columbia. We have now legislation that permits us to garnishee the salary of Federal employees who are indebted to the United States, but we cannot do it with respect to employees of the District of Columbia.

I believe that section 1206 of the District of Columbia Home Rule Act reserves for Congress, as it says, the right to enact legislation for the district "on any subject" and would empower the Congress to do away with that exemption and allow us to go after more than half of the debtors in the District of Columbia that the U.S. attorneys office has judgments against.

That concludes my remarks. I would be happy to try to answer any questions the committee may have.

Senator COCHRAN. Thank you very much, Mr. Ford.

Mr. Hastings, we don't have a written statement from you, but we invite you to make a presentation to the committee if you choose at this time.

Mr. HASTINGS. Thank you, Mr. Chairman and Senator D'Amato. I just have a few remarks.

First of all, let me heartily endorse everything that Bob Ford said, including his recounting of the splendid job that the U.S. attorneys have done on the special project that we have been engaged in for the last several months.

I am here today because the Department of Education has one of the largest portfolios of individual accounts in default. We have something in excess of 1 billion dollars' worth of national direct and federally insured student loans for which the Federal Government has debt collection responsibilities.

The defaults in the Guaranteed Student Loan Program will exceed $1 billion in this one year alone, and that absolute dollar amount will continue to increase over the next few years unless something is done.

That is really my primary concern in this entire area.

The Fair Debt Collection Practices Act—and I must say that I am not the world's expert on it, but I do have a fair understanding of it—prohibits a collection agency from, while they are talking to a debtor on the telephone, from saying something is going to happen if, in fact, they don't intend to make it happen. The best thing in the world that you can do when you have a live one on the phone and you know they can pay is to say, "OK, pay me now or pay me later, but we are going to get the money."

Our inability in some cases—certainly not in all jurisdictions, I would be the first to admit—to be able to say that and know that a letter from an attorney is going to go out within a reasonable period of time, and I am talking 1 week, 2 weeks at the outside so you can get immediate follow-up and you get that debtor with the second thought saying, "Uh-oh, something is going to happen to me if I don't do this," the kind of reaction right now when we are sending notices out telling people we are going to take their income tax refunds next year, unless we have the ability to do that, we are never going to succeed, first of all, in collecting that delinquent debt, and more importantly, where the real money is to be saved in providing the deterrent effect, which is absolutely necessary to keep these programs from being undermined by a lack of public confidence.

That is our most important consideration. Obviously, we support the administration bill, S. 1658, and S. 209 which is essentially identical with the changes that Mr. Ford has suggested the administration would like to see.

Senator COCHRAN. We appreciate your being here, and we thank you for the testimony. We notice, in just looking at the debt collection activity by department that the Department of Education comes in second place, I guess; Agriculture is first, Education, right now, in terms of delinquent amounts, has over $3.976 million owed. This is in fiscal year 1984 that amount was accumulated.

These accounts, as I understand it, when they are determined to be delinquent, are referred to the Department of Justice; is that correct? Is that the procedure after some effort is made to collect them by the Department?

Mr. HASTINGS. A viable part of any collection effort is a litigative effort. That is part of the overall scheme.

We have many routes available to us. We have Federal employees, about 289 Federal employees in three regional offices who make a first collection attempt on those accounts. We have three collection contracts let now. We, just last week, awarded six more with private collection agencies who also attempt to work those cases, and then in those cases where it is appropriate to refer to the Department of Justice for litigation, we would do that.

The preparation of a case for litigation has proven to be fairly expensive, and, in fact, our estimates, based on our special project with Justice over the last several months, indicated that it is costing us about a couple of hundred dollars a case to prepare a case to go to litigation.

Some of that work could be passed on in the contracts let under this bill, if it were enacted.

Since those are contingency fees, if no moneys are collected, there is no direct problem.

Senator COCHRAN. So you do have the authority to contract for debt collection services from the private sector, and you do that?

Mr. HASTINGS. Yes, sir.

Senator COCHRAN. But the debt collection agencies can't prosecute; they can't litigate; they can't file suit. That has to be done by the Department of Justice; is that correct?

Mr. HASTINGS. That is correct, sir.

Senator COCHRAN. So the need for this legislation, as you see it, is that this would provide some extra legal leverage in the effort to collect debts?

Mr. HASTINGS. Yes, sir.

Senator COCHRAN. By providing for collection through litigation by private sector attorneys in addition to the Department of Justice.

Mr. HASTINGS. That is right; it is just an additional tool.

Senator COCHRAN. Mr. Ford, you talked about the fact that there has been substantial improvement in the way we have, as a government, been collecting delinquent debts. I want to say that that is an important step in the right direction. I applaud you and the others at the Department who are making those numbers different from those in the past.

The $1.3 billion that you talked about being collected and paid into the Treasury is an important new development, and I know that it is a result of a lot of hard work and some initiatives that have been developed and implemented, and I congratulate you and the Department for that.

Mr. FORD. Thank you for your kind words, Mr. Chairman.

Senator COCHRAN. I couldn't really tell, though, whether you are for the bill or against the bill. Maybe you are restrained in what you can say. I know you don't want to say this is too big a job for the Department of Justice, but I think that everybody, in looking at the numbers, would just simply agree as a matter of logic that

92,000 pending debt collection cases at the Department is really a number that is shocking. It is too big to be handled by the Department that is, at the same time, trying to prosecute drug pushers and dealers we are trying to put behind bars and do the myriad other tasks that are so important to our country today.

I think if I were a prosecutor or if I were a U.S. attorney and I had all these responsibilities, frankly, I would put the emphasis where the greatest danger to society is right now, and that is in some of these criminal law areas or some of the bigger civil litigation cases. The debt collection work is just simply going to get shoved aside, no matter what the procedures are.

I think we are going to need to, at least, have the authority under the law to turn some of these matters over to private sector attorneys for litigation and to utilize the debt collection agencies.

I tend to think this is a good idea; this is a piece of legislation that ought to be enacted so that we will have that extra leverage against people who just, with impugnity, now don't pay their debt to the Federal Government. They find out they owe their mortgage or they owe the light bill or something else; they know they better pay that.

But if they are squeezed at all, they can let that debt to the Government slide and know they are not going to get sued. It is just not likely that they are going to be made to pay that under the law.

What is your reaction to that? Isn't the caseload just too big for the Department?

Mr. FORD. To clear the record, Mr. Chairman, unequivocally, the Department of Justice is part of the administration. It is an administration proposal, and we support it. I would just like to note parenthetically that whereas 92,000 cases sounds like a lot of cases in the abstract and is, when you divide it by 94 attorneys offices, it comes down to fairly manageable numbers.

It is the numbers that aren't at the Justice Department yet that are scary. We don't know how valid those numbers are, candidly. We have heard of all kinds of numbers lurking around at the agency.

May I give you an example? Housing and Urban Development came to us sometimes ago and they said, "Look, we have got some 50,000 house cases of title I home improvement loans that are in default, and they are small numbers. They are under $600." Under the joint regulations promulgated by the Attorney General and the Comptroller General, we generally discourage agencies from sending us claims under $600, because we have found that it is not cost effective to go after them.

But if you have 50,000 of the rascals, it adds up to a lot of money pretty quick. So what HUD had was an idea that maybe we could go into small claims court with nonlawyers in some of these districts and collect these things. We said, "That sounds great."

So we are working right now to pilot a program.

Senator D'AMATO. Mr. Chairman, if I might comment just on that one point. You know, Mr. Ford, that suggestion is absolutely ridiculous. If you have 50,000-plus debts worth about $600 each, you should refer them to a qualified collection agency and, if necessary, then to a qualified law firm for litigation. The Attorney General

will select the best qualified law firms and the result will be that you will collect your money faster. You will get a better percentage of debts collected, and more money will be returned to the Treasury.

If you hire nonlawyers to go into small claims courts it simply won't work and it will add new problems. I can speak from personal experience with respect to the difficulties of debt collection work. As a young lawyer, those were the only kinds of cases I could get. However, I found that collection was very hard. Unless law firms are computerized and use modern methods, collection work is not an easy undertaking.

In the real world of debt collection, you need to have a cost-effective system. You shouldn't put nonlawyers into small claims courts to handle 10 or so cases. That won't solve the problem.

You must utilize experts who, instead of handling 10 cases, can handle hundreds of cases. If the Federal Government will hire professionals, respected in their field, who can do the job, we will get a better return. A higher percentage of delinquent debts will be collected, and you will get it done with alacrity.

Sending nonlawyers into small claims courts to pursue a minuscule amount of debts is exactly the kind of thing that we don't need.

Mr. FORD. Senator, may I respond? I don't understand your antagonistic attitude.

Senator D'AMATO. It is not antagonism; it is frustration. I have followed this issue for 4 years, and we are still experiencing the same failure to take meaningful action to collect these delinquent debts.

Mr. FORD. We have been frustrated too, Senator. We don't have the authority to hire private counsel right now. We have been trying to work with the authority we have right now to do the best job we can.

Senator D'AMATO. That is what I said.

Mr. FORD. We are not opposing that idea, Senator. We are supporting it.

Mr. HASTINGS. I am glad Bob brought up that issue, because I was just about to comment on that. GAO just recently did an audit on our collection efforts, both our Federal collectors and the collection agencies. I believe their estimate was that about 500,000 cases in our debt collection portfolio had gone beyond the statute.

I have some questions about the methodology, because they didn't look to see what was in the file, but it was based on the date, the claim paid date and whether or not a payment had been received, without regard to whether there had been a reaffirmation of the debt in many cases.

I think that category of loans below $600 is a great one for getting into, and I will tell you why. We have been sending out, since the middle of August, the first of about 1 million notices to individuals in our portfolio telling them that we are going to take their income tax refunds next year. What has been happening in the last couple of weeks now is the way we devise that letter, the top third of that letter was perforated. All they had to do was tear it off and send it in with a check if they wanted to do so.

We have to process those separately so I am able to get a count from what is happening there. Ten days after we sent out the first of those letters, the checks started coming in.

The average payment that is coming in now, in a little bit over a month, is about $350. Interestingly, when you look at the split between federally insured loans and national and direct student loans, most of the money is coming in from national and and direct student loans. The significance of that is the accounts have a smaller average balance and people find it a lot easier to write a check for $300, $400, $500, $600 than they do for for $2,000.

I think we can get some very good results if we didn't do anything except look at that portion of the portfolio, cases which currently agencies are generally barred from submitting to the Department of Justice.

Senator COCHRAN. Senator, I don't have any other questions of these witnesses. I do want to express our appreciation for your being here, your cooperation with the committee, submitting this statement and helping us understand the practical implications of the debt collection process and the changes being recommended.

Thank you very much for being here.

Mr. FORD. Thank you. I appreciate it.

Mr. HASTINGS. Thank you.

[Mr. Ford's prepared statement follows:]

# Department of Justice

STATEMENT

OF

ROBERT N. FORD
DEPUTY ASSISTANT ATTORNEY GENERAL
CIVIL DIVISION

BEFORE

THE

SUBCOMMITTEE ON ENERGY, NUCLEAR PROLIFERATION
AND GOVERNMENT PROCESSES

OF THE

SENATE GOVERNMENTAL AFFAIRS

CONCERNING

S. 209 AND S. 1658

ON

SEPTEMBER 26, 1985

Mr. Chairman and Members of the Subcommittee--

It is a pleasure to be here this morning to testify on Senator D'Amato's bill, S. 209, the Federal Debt Recovery Act of 1985 and S. 1658, the Administration's debt collection amendments, introduced by Senator Roth. Both these bills would strengthen the powers of the Justice Department to collect debts by authorizing the Attorney General to retain private counsel to bring debt collection actions on behalf of the United States.

I

In a July 31 message to the Congress, President Reagan announced his Management Improvement Program to reduce fraud and waste, develop cash and credit management programs, and consolidate payroll, personnel and accounting systems. This message reflects the Administration's continuing commitment to reducing the cost of government while improving the timeliness and quality of goods and services being delivered to the American public.

A major part of the President's broad Management Improvement Program is directed at fraud in connection with government programs. This part of the Administration's initiative consists of an eight-bill Anti-Fraud Enforcement Initiative which the

Attorney General announced last week. The eight bills which make up our anti-fraud legislative package would give the Department of Justice important and, in some cases, long overdue weapons with which to deter fraud and bribery in connection with federal programs and to recover tax dollars from those who would abuse government programs to line their own pockets. The aggressive collection of debts owed the United States -- including those from judgments obtained by our fraud prosecutors -- is also a major priority. The Debt Collection Act Amendments are therefore a very important part of our package.

The other seven parts of our package, which are within the jurisdiction of other subcommittees of the Senate, include the Program Fraud Civil Penalties Act, the Contract Disputes Act and Federal Courts Improvement Act Amendments, the Bribery and Gratuities Act, the Anti-Fraud Criminal Enforcement Act, the Federal Computer Systems Protection Act, the False Claims Act Amendments and the Grand Jury Disclosure Amendments. We are pleased to see that legislation substantially similar to our Program Fraud Civil Penalties Act is being processed by this Subcommittee and that the computer crime issue is receiving attention in the House Judiciary Committee. In addition, Senator Grassley recently held a hearing on S. 1562, containing False Claims Act Amendments and grand jury reforms similar to those in the Administration's bill. With this hearing today,

five of our proposals will at least have been the subject of congressional hearings.

II

Before turning to the specifics of the legislation, I would like to discuss briefly this Administration's record in the area of debt collection. The Attorney General has assigned great importance to the task of collecting debts owed to the United States, making it one of the Justice Department's chief priorities. The strength of this Administration's commitment to recovering money owed the government could not be better expressed than in the words of President Reagan himself when, in a 1984 radio address, the President affirmed:

> . . . with support from the Congress, we're taking a tough new stance on collections. We're not singling out any individuals or groups, but we can, we must and we will go after the cheaters who profit from the system at the expense of honest citizens . . . who live by the rules.

While the Attorney General asked Richard K. Willard, as head of the Civil Division, to coordinate the Department's collection efforts, it is the 93 U.S. Attorneys throughout the country who are in the front lines of this effort. We are happy to report that, over the past four-and-one- half years, the U.S.

Attorneys' Offices have compiled a remarkable and consistent record of increasing success in debt collection activities. Since 1982, we have collected over $1.2 billion in cash. Moreover, these figures do not reflect forfeitures and foreclosures.

The Attorney General, the Director of the Executive Office for United States Attorneys and other responsible officials in Washington have made every effort to support and encourage the debt collection efforts of the United States Attorneys. Since the initiation of our debt collection effort, we have taken the following actions:

- Met individually with each of the 93 U.S. Attorneys to impress upon them the Attorney General's commitment to collections and to extract commitments to take a personal interest in improving their debt collection operations.

- Added 100 permanent, full time positions and 60 temporary (one-year) positions devoted exclusively to debt collection, in the U.S. Attorneys' Offices. At this point, the majority of U.S. Attorneys have either computer-supported systems or automated word processing systems devoted to collections work. In the near

future, every U.S. Attorney should have computer-supported or sophisticated records systems for debt collection. When these systems are operating, we should be able to generate automated periodic reports to track the progress of our collections efforts by U.S. Attorney's district, by agency, by debtor, or by almost any conceivable measure.

° Conducted several week-long training conferences for collections personnel in U.S. Attorneys' Offices. We followed up this formal training with a program in which outstanding collections clerks from selected offices are visiting U.S. Attorneys' Offices with collections problems to apply their expertise to the situation and help devise solutions.

° Held training sessions for representatives from our client agencies to inform them of the data which must be sent to the U.S. Attorneys to enable them to collect delinquent debts owed the agencies. From these meetings, and with the help of OMB and GAO, we devised the Claims Collection Litigation Report for use by all agencies sending us debts to collect. The report standardizes the format for the debtor information needed for the U.S. Attorneys to collect these monies.

- Encouraged U.S. Attorneys to file large groups of collections cases simultaneously to increase public awareness of our collections efforts. Mass filings of student loan cases, the impoundment of debtors' cars and similar events received wide publicity and have helped to let the public know that this Administration is serious about collecting the delinquent debts owed the United States.

Perhaps our greatest accomplishment this far has been the implementation of a direct deposit or lockbox system. We found that the U.S. Attorneys were sending money they collected back to the creditor agencies and that weeks, and sometimes even months, went by before collected checks were deposited. A study showed that the United States could save approximately $1.2 million in interest on this float if we could get the money into the Treasury faster. With the help of OMB and the Treasury Department, we have implemented a system pursuant to which every dollar we collect is sent daily to a lockbox. The bank operating this system gets the funds to the Treasury the day after it receives them. Justice, thereafter, notifies the creditor agencies how much has been collected on their debts and is on deposit in the Treasury. Not only is this system getting the cash into the Treasury much sooner, but it provides almost

instantaneous data on what we have collected for each agency on each debt sent to us for litigation.

Supplementing these administrative initiatives has been the enactment of the Debt Collection Act of 1982 which enhanced the ability of federal agencies to collect debts owed them. In addition, the 1984 Deficit Reduction Act authorized the IRS to deduct debts owed the United States from the tax refund checks it sends out each year. This new power, which is currently being implemented and will become effective in connection with 1985 tax returns, is expected to greatly aid the government's debt collection efforts and may become the single most important collection tool available to us.

III

Turning now to the legislation, S. 209 and S. 1658, these bills are essentially identical in that they would authorize the Attorney General to retain private counsel in such districts and for such classes of cases as he deems appropriate. Under the scheme envisioned, once such counsel are retained, the creditor agency could refer cases directly to the private counsel, (consistent with the terms of the agreement) who would act as attorneys for the agency. Contracts entered into between Justice and the private firms would require periodic reporting

of the results of litigation and would expressly authorize the Justice Department to remove a case from the hands of a private firm when the Attorney General believed this to be in the public interest. For instance, if a debtor raised a counter-claim against the United States or challenged, in some respect, the basis of the loan program, we would want such a case to be handled by the local United States Attorney. However, such important legal issues rarely arise in small debt collection litigation. Most such cases are not even contested in any way. Consequently, we expect that this authority would rarely be exercised.

Both bills would also give the Attorney General plenary authority to negotiate such terms in the contract as he felt appropriate and to terminate it when he believed such action to be in the public interest. And both would require the private firms to comply with the Fair Debt Collection Practices Act. Finally, and most importantly, both bills, like the current provisions of the Debt Collection Act relating to the retention of debt collection agencies, would permit the private counsel to be paid out of the proceeds they recover.

The Administration's bill permits the agencies to refer cases directly to the private counsel, "subject to the approval of the Attorney General". This language is intended to ensure



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that the Attorney General retains the ultimate authority to oversee all case referrals. As a matter of administrative convenience, we do not envision the Justice Department reviewing and forwarding each case file.

S. 209 contains a provision permitting "the head of any executive or legislative agency which refers a claim under the contract to resolve a dispute regarding the claim, to compromise the claim, or to terminate a collection action on the claim..." This authority to approve settlements without Justice Department approval is not included in the Administration's bill, but it is not objectionable from our standpoint.

Unlike S. 209 however, the Administration's proposal would preclude any judicial review of the Attorney General's award of contracts under the Act. The provisions of the Federal Property and Administrative Services Act, the Contract Disputes Act and the Federal Acquisitions Regulations would not apply to the retention of private counsel. The decision would be at the sole and unreviewable discretion of the Attorney General. This would ensure that when such contracts were let, they could not be challenged in bid protest suits in the Claims Court or the various district courts under the Scanwell Theory. Scanwell Laboratories v. Shaffer, 424 F.2d 859 (D.C. Cir. 1970). This preclusion of judicial review is particularly important if this

legislation is to be implemented in a prompt and effective manner.

Since the decision in Scanwell and the enactment of the Federal Courts Improvement Act, disappointed bidders are permitted to file so-called "bid protest" actions in federal court when they are not selected for a contract to which they believe themselves entitled. We strongly believe that it would be inadvisable to expend judicial resources litigating this issue. Ordinary government contracts for the purchase of goods can be effectively reviewed by the courts as they contain relatively straightforward provisions concerning price and quantity. However, the retention of professional services involves inherently subjective judgments better left to Executive Branch officials.

And, finally, Mr. Chairman, we have to recognize that lawyers are a litigious lot. Back in my office, I have a folder filled with literally hundreds of letters from private debt collection counsel seeking information on how they can receive a government debt collection contract. If this legislation passes without a preclusion of judicial review, we are concerned about litigation that could consume the time of Department attorneys who could otherwise be devoting their efforts to debt collection.

Of course, our selection of private counsel will be guided by carefully developed criteria. We would look for firms with extensive debt collection experience, particularly those with the capacity to handle a large volume of cases. Automated litigation support and a trained collections staff is particularly important. I would stress that the vast majority of debt collection cases are never briefed by a lawyer or decided by a judge. Instead, the defendants do not contest the allegations and voluntarily enter into a repayment scheme. Hence, skilled collections clerks and paralegals are the key to a successful operation.

Another important factor would be the reputation of the law firm for responsible practices in the collection of debts. These law firms will be litigating in the name of the United States and, while we do not believe that their actions could subject the United States to tort liability or an award of attorneys fees, we do foresee defending against lawsuits containing such allegations that are filed against the United States. And, although we expect the firms to meet the highest ethical standards, we will include "hold harmless" clauses in our contracts to protect the United States against liabilty for the conduct of private counsel.

S. 209 also differs from the Administration's bill in that it would amend the Debt Collection Act to permit the IRS to

utilize private debt collection agencies, or private counsel, in the collection of tax debts. Because this issue is not germane to the issue of retaining private counsel and because it is strongly opposed by the IRS, the Administration urges the Committee not to repeal the exemption for tax debts contained in 31 U.S.C. 3718(d).

Tax collection is a core function of government for which contracting out is inappropriate. Historically, when tax collection functions have been contracted out or when tax collectors have kept a percentage of the amounts collected, public confidence in the integrity of the tax system has been adversely affected. Reasonable actions may be perceived as improper where the tax collector personally profits. Many citizens recognize that "the power to tax is the power to destroy" and, consequently, the public must be assured that the tax collector derives no personal benefit from any action or decision. The appearance of propriety is as crucial as the fact of propriety.

The administrative collection powers of the IRS separate the Service from all other government agencies responsible for the collection of debts. For example, to collect a student loan through garnishment of wages or by imposing a lien on property,

a suit must usually be brought in court and a judgment entered. In contrast, the IRS can levy on property of a taxpayer or file a notice of tax lien without the need to file suit. Partly as a result of these administrative collection powers, the IRS is a very efficient debt collector and eventually collects more than 99 percent of the taxes assessed in a given year. A further consequence of IRS administrative collection efforts is that the number of cases ultimately referred to the Justice Department is small and the Justice Department has no backlog of tax collection cases. Accordingly, there is absolutely no need for retaining private counsel to collect taxes.

Tax collection cases brought by the Justice Department at the request of the IRS are usually complicated proceedings involving fraudulent transfers, suits to foreclose tax liens or to enforce levies, and similar proceedings. The taxpayer often seeks to challenge the underlying tax liability, unlike most proceedings involving nontax debts, with the result that many of these tax cases raise issues of government litigation policy. Thus, handling of these proceedings by government attorneys is essential.

The proposal also raises an issue of tax privacy concerning the authority of the IRS to disclose tax information to private debt collectors and the desirability of authorizing such disclosure.

That concludes my prepared statement and I would be happy to answer any questions.

Senator COCHRAN. We have a panel of State government witnesses whom we appreciate being here, the Honorable William Broaddus, who is the attorney general of the State of Virginia; Perry Michael, first assistant attorney general of the State of Georgia; and Dr. Delores Cross, president of the New York State Higher Education Services Corp.

**TESTIMONY OF WILLIAM G. BROADDUS, ATTORNEY GENERAL, STATE OF VIRGINIA; PERRY MICHAEL, FIRST ASSISTANT ATTORNEY GENERAL, STATE OF GEORGIA; AND DOLORES CROSS, PRESIDENT, NEW YORK STATE HIGHER EDUCATION SERVICES CORP.**

Senator COCHRAN. We thank you for being here, and we appreciate your providing us with statements for the hearing. We will make each of these statements a part of the record.

We would encourage you to make summary comments so we will have an opportunity for discussion of your views and your statements to the committee.

General Broaddus, I thank you for coming. Your may proceed.

Mr. BROADDUS. Mr. Chairman, Senator D'Amato, thank you for the opportunity to provide information from the Virginia attorney general's office for debts collected by our government and the use by that office of private counsel. Based upon our experience, we recommend the concept embodied in Senate bill 209.

Briefly, if I may, I would like to give an overview of our process and then comment on several specifics with respect to the use of private counsel.

In 1982, we began our present process, when then Attorney General Baliles recognized that Virginia needed to put its collection efforts in order. At that time, he and our comptroller promulgated guidelines which gave our State agencies 90 days to collect their debts with in-house efforts which do not involve litigation or attorneys.

After 90 days, if the debt was not collected, then as a general proposition, it will be referred to the attorney general's office. That office would then analyze the debt, and if we concluded that it would be fairly easily collected, we would refer it to one of our own claims representatives working in our office. If we concluded that litigation was necessary, then as a general proposition, we would probably refer it to one of our in-house assistant attorneys general.

On occasion, however, we would also use special counsel and refer the matter to a private attorney. Our office supervises all of those efforts. With respect to the use of private attorneys, we have contracted with 35 individuals throughout and across Virginia. They are primarily members of small law firms, many of whom specialize in collection efforts.

We have entered into agreements or contracts with these individuals, and those agreements embrace many of the ideas set forth in Senate bill 209. For example, the compensation, the requirement of monthly reports, the fact that the private contract is terminable at will, all those things are set forth in this agreement.

To these special attorneys, in the past 2 years, we have referred 1,600 cases having a total value of approximately $4.25 million.

I will be the first to admit that we do not send to the private counsel cases which are easily collected. These are cases which generally have a venue outside of Richmond, where our office is located. They are cases which usually have a small value, for example, under $500 as opposed to the $600 that I heard referenced earlier.

There might also be cases involving an area having a fairly specialized Federal requirement for reporting purposes.

We have found that on the whole, the activities of these attorneys are fair to our office and to the Commonwealth. To date, they have collected approximately 11 percent of the total value referred to them.

The attorneys with more experience in collection activities tend to have a much higher percentage, and we analyze the monthly reports to see which attorneys are actively and vigorously pursuing their activities so that we can replace those who are inefficient with attorneys whom we believe would be more efficient.

The economies of scale, we think, require the availability of private counsel to assist the State in its efforts and together, utilizing private counsel and our own attorneys, we feel represents the best efforts on behalf of Virginia.

So in conclusion, we would recommend that you make available to the Federal agencies through the Department of Justice access to private counsel. I think that that would be a benefit to the Government, as it has certainly benefited Virginia.

Mr. Chairman, if I might, I would like to make one further observation which doesn't directly relate to this particular bill, but in light of Mr. Ford's comment concerning the ability or inability to garnishee salaries of District of Columbia employees, Virginia faces the same problem with respect to Federal employees, and we think that as you consider this further matter with respect to the District of Columbia employees, it might also be well if you would consider the giving the States the authority to guarnish the wages of any Federal employees.

That has been done in certain specific situations, but sovereign immunity has not been waived as a general proposition. We think that would help the States as well as the Federal Government.

Senator COCHRAN. Reciprocity, fair dealing.

Thank you, General.

Mr. Michael, thank you for being here. You may proceed.

Mr. MICHAEL. Thank you, Mr. Chairman and members of the committee. I am the first assistant attorney general to Michael Bower, the attorney general of Georgia. Mr. Bowers regrets that he was not able to be here with you today.

I will attempt to relate very briefly Georgia's experience with collecting debt. We will not necessarily be taking a position on the bill but show you what our experience has been.

My prepared statement, as you indicated, has been submitted for inclusion in the record. I will attempt to briefly summarize what we are doing.

In 1970, approximately 1970, the attorney general, with the cooperation of the other State agencies, set up a program to handle delinquent accounts. One of the things that our office did at that time was to select outside counsel to assist in the debt collection. This was done because we were not equipped to handle this matter en-

tirely in-house. We did not have the staff; primarily, we did not have the funds to set up an effective system.

The State now pays a fee only when the debt has been collected and the money has been remitted to the State. The delinquent accounts I am referring to are primarily small collection files. Approximately 50 percent of the files involve defaulted student loans. These files have an average range of $1,000 to $3,000.

Other collection files typically are much smaller. For example, in the department of human resources, it ranges from $400 to $800. Of course, we do not include tax claims in this category, because they are all done in-house.

Prior to forwarding defaulting files to our offices, the State agencies do initiate their own collection process, primarily with collection letters. Some of the agencies, such as the agency that handles student loans, will then refer certain accounts to private collection agencies if it appears that it is collectable at that stage.

After these efforts have proven unsuccessful, the files are then forwarded to our office for referral to the private firm or, in some instances, where there is a large volume, the agency will forward the file directly to the private firm with our approval and notify us of the files that they have transmitted.

After a file is referred to the private counsel, we do, on occasion, bring that case back in-house to handle. We do this in certain cases, for example, where policy questions may become involved; where there has been an attack on the constitutionality of the act or the practices of the agency or, for example, where a counterclaim may be filed.

For the fiscal year ending June 30, 1985, collections by the private firm, which doesn't include collections by the agency or by the attorney general, totaled approximately $1.25 million. Remember, these were all small claims. I think the record as a whole shows that the program in Georgia has been efficient, and it has been successful.

Thank you.

Senator COCHRAN. Thank you very much, Mr. Michael, for your statement on behalf of the attorney general from the State of Georgia. Thank you very much.

Dr. Cross, thank you very much for being here, for being part of this panel. You may proceed with your testimony.

Ms. CROSS. Thank you very much for inviting me. I am very pleased to be here today to discuss a proposed bill under consideration to permit referral of Federal debt claims to outside counsel for legal action.

The New York State Higher Education Services Corp., of which I am president, has had extensive experience in employing the services of outside legal counsel to pursue its collection claims on defaulted student guarantee loans. As my presentation to you, I would like to share with you the steps the agency takes to prevent defaults and our approach to collection involving collection firms and collection attorney firms and some of the steps we take which attribute to our success.

The Higher Education Services Corp. in New York is the largest State agency in the Federal Guaranteed Student Loan Program. We guarantee approximately $1 billion a year in guaranteed stu-

dent loans. In addition to that, the agency administrates over $400 million in State grants.

In addition to the part of our collection approach is to prevent defaults. We see this as the first step, and to communicate these steps to parents and students.

For example, this year, we published a brochure entitled "Rights and Responsibilities," and every recipient of a guaranteed student loan got that brochure.

Last year, we undertook a survey of why students default on their loans and have used that information in the training of university counselors, lenders, and the public at large.

We have also suggested to colleges involving faculty and students in money management courses. In addition to that, the State of New York runs the State payroll against the default list. We then contact individuals who are employed by the State and provide them an opportunity to pay back their loans through a payroll deduction plan.

In addition to that, for the past 2 years, we have run the loan default list against the State tax refund and have been able to recoup a significant portion of dollars using this method.

A significant portion of our loans are brought in to repayment by our collection unit within the agency. We have employed approximately 130 people to handle in-house collection.

In all, through in-house collection and the use of collection agencies, we have been able to collect $121 million. In the fiscal year ending 1984, New York State collected 30 percent of the guaranteed student loan default dollars collected nationwide.

Our experience has been that if there is a need to use outside counsel, we have used outside counsel. The availability of outside counsel as provided in this bill, we further feel, should not be used as a reason to require the reassignment of accounts from State agencies such as ours which have the referral, aversions and collections and have also developed procedures and policies as it relates to collection agencies and collection law firms.

Our success, again, is attributable to our experience in collection. As a State agency, we have also taken advantage of our own attorney general. However—and perhaps this is pertinent to the bill—after this was in effect for a period of time, approximately 10 years ago, it was mutually decided between the corporation and the attorney general that because of the size of the collection workload and the limited facilities of the attorney general's office, that it would be appropriate for us to seek outside legal services to enforce our collection claims.

However, we should note that recently, the State attorney general has indicated that they would be willing to undertake the collection of student loans as they are setting up a separate unit in that area.

In moving from the attorney general's office a few years ago to outside collection firms, we undertook the involvement of outside collection firms through an extensive bidding process.

In that bidding process, we involved three collection firms and one collection law firm. The criteria that we used with both categories was experienced in student loan collections; the computer ca-

pability and having an approach that we felt would be effective in recouping dollars from defaulted loans.

In the 5 years that these contracts have been in effect, we have seen a recovery rate of between 11 and 13 percent on the outstanding dollars. We have also determined, in terms of count, out of the 87 accounts referred to the 4 firms, some 29,700 judgments were entered.

In terms of dollars collected from the four firms since the bidding went into effect, we have recovered $27 million.

One important fact for us that has to be considered in employing the attorneys is the ability of attorneys to handle large accounts. As we pointed out, over a period of 3 years, 5 years exactly, we handed out 87,700 accounts to firms.

Our experience has been that in using in-house collection, the limited service of the attorney general, and a combination of collection firms and collection law firms, we have been able to recoup a substantial sum of money.

The effectiveness, however, has been contingent upon our ability to develop, in the contract with collection agency and collection law firms, certainty standards and criteria, standards as it relates to a time in which an account—how long it is held before legal action; standards such as our auditor having access to accounts; and also standards related to how long they can hold an account before it is transferred to another agency.

In sum, our experience has been that if we can obtain the services of collectors who have had experience in student loan collection and who have the computer capability, as well as approaches to collection, that we have been effective in using outside attorneys.

The point for us is that the attorneys must have the capability to undertake large, a large number of contracts.

Thank you.

Senator COCHRAN. Thank you very much, Dr. Cross. I was interested in Dr. Cross' statement that her agency uses competitive bidding in the collection process of attorneys. I wonder, do both the States of Virginia and Georgia use competitive bidding, as well?

Mr. BROADDUS. Mr. Chairman, we do not use competitive bidding as that concept is normally considered. We do consider the factors which Dr. Cross enumerated concerning support capability of the firm to handle a large number of cases. computerized ability and things of that nature, but we have not used actual competitive bidding processes, as such.

Senator COCHRAN. Mr. Michael.

Mr. MICHAEL. No, Mr. Chairman, we do not use competitive bidding. As I indicated, we started our program in 1970, and we had several firms as a collection source at that time. For some of them, claims were so small that it was not really efficient for them to handle, and right now, we only have one firm that is handling the small collections. We have that set up on a fee schedule, a fee system based on collections.

Senator COCHRAN. I think Attorney General Broaddus made the observation that it is a good idea to have audits of attorneys, or your procedure in Virginia is to require audits from time to time. Is that correct?

Mr. BROADDUS. We specifically provide in our agreement that we retain the right to go in and audit the firm's records. We think that that is a safeguard which is a very prudent safeguard, and one which, if clearly spelled out, will, I think, set the proper tone for the relationship.

We, to date, have not yet had an opportunity to have to resort to it, but if we ever feel that there is such a need, we will certainly do it.

Just as our office is audited by the auditor of public accounts, we think it appropriate that we be able to go back and check every aspect of the private counsel's records and what-not.

Senator COCHRAN. What has your experience been in New York, Dr. Cross?

Ms. CROSS. In addition to the audit, what we have included in our most recent contract is that the firms be evaluated and that new accounts be based on performance. We are currently in the process of issuing a number of new contracts. What we have said to the firms is that additional accounts will be given to them based upon their performance.

I want to again reiterate we have found in our experience we are most successful in the bidding process. When we did not use a bidder—that was, I would say, about a dozen years ago—we incurred a cost which was approximately 50 percent higher than what we have paid out under the bidder.

The bidding process also provides an opportunity to develop a criteria, a criteria that we find results in improved collections.

Senator COCHRAN. Your collection rate, I think you testified, was 11 to 13 percent?

Ms. CROSS. That is the collection rate of the outside contractors that we gave a bid to sometime ago. That was really the cover.

Senator COCHRAN. Your program does a great deal better than that because of all the steps you go through and the educational process that you used to acquaint debtors with their responsibilities.

Ms. CROSS. The data that was recently issued by the Federal Government shows that while there has been an overall increase in default of 40 percent by many other agencies, our default rate has increased 22 percent.

So we attribute this to what we do in default prevention as well as aversion, as well as collections, specifically, the criteria and bidding process.

Senator COCHRAN. Thank you very much.

Senator D'Amato.

Senator D'AMATO. Mr. Chairman, I think that Dr. Cross has spelled out very well the benefits of her program. There would be far more people defaulting absent the State's program of utilizing outside debt collection in conjunction with a vigorous State enforcement. It is hard to produce any figures on how many debtors are deterred from defaulting, but certainly you would have a far greater number of defaults. Thus, it is not just the 11 to 13 percent extra that is collected; it is the hundreds of millions of dollars in debts that do not go into default because debtors know that there is a good likelihood of law suits being brought and that delinquent debts will be pursued.

I would venture to say that if we bring about a similar program on the national level whereby the percentage of people who are defaulting will begin to decrease and we will be able to collect more dollars without the need to resort to the ultimate tool of litigation.

That is another reason why we should move expeditiously in this area.

I thank you, Mr. Chairman.

Senator COCHRAN. We appreciate your being here and helping us understand your experiences in the use of private attorneys and collection agencies and helping to do a better job on the debt owed to the Government.

Thank you very much.

Mr. BROADDUS. Thank you.

Senator COCHRAN. I appreciate it.

[The prepared statements of Messrs. Broaddus (with attachments), Michael and Dr. Cross follow:]

UNITED STATES SENATE SUBCOMMITTEE ON
ENERGY, NUCLEAR PROLIFERATION AND
GOVERNMENTAL PROCESSES

WRITTEN TESTIMONY ON BEHALF OF SENATE BILL 209,
THE FEDERAL DEBT RECOVERY ACT BY
THE HONORABLE WILLIAM G. BROADDUS
ATTORNEY GENERAL OF VIRGINIA
SEPTEMBER 26, 1985

"Utilization of Private Counsel to Recover Debts
on Behalf of the Commonwealth of Virginia"

Chairman Cochran, Senators D'Amato, Cohen and Glenn, and staff members of the Subcommittee on Energy, Nuclear Proliferation and Government Processes, I appreciate the opportunity to testify before the Subcommittee on the proposed Federal Debt Recovery Act of 1985 as contained in Senate Bill 209.

The Commonwealth of Virginia utilizes private counsel in our debt recovery program. We have found this utilization to be an important part of our success. We recommend that the Federal Government do likewise. In support of this recommendation, I would note the following.

RECOVERY OF DEBTS ON BEHALF OF THE COMMONWEALTH
IS SUPERVISED BY THE OFFICE OF THE ATTORNEY GENERAL.

A comprehensive state-wide system of debt management and recovery was instituted in July of 1982 by Attorney General Gerald L. Baliles. At that time, the Claims Section was established in the Office of the Attorney General to coordinate the Commonwealth's collection of accounts receivable.

In conjunction with the State Comptroller, Attorney General Baliles promulgated a directive setting forth procedures for internal agency collection activity and subsequent referral of

accounts. Pertinent portions of these procedures are attached hereto as Appendix A.

In summary, these procedures specify an initial period of ninety days during which the state agency pursues its claim through internal procedures. Upon the expiration of the first ninety days, claims are forwarded to the Claims Section of the Attorney General's Office or private collection agencies. The state agency may request an extention of the ninety day deadline from the Claims Section. In certain situations where payment appears to be forthcoming, the agency may retain the claim until the claim is satisfied.

The Claims Section supervises the various state institutions' and agencies' internal collection procedures as well as the collections activities of the private collection agencies. Additionally the Claims Section reviews accounts referred to the Section for legal action; see flowchart attached as Appendix C.

Once an account has been referred to the Attorney General's Claims Section, the collection staff of the Section, currently three non-attorney representatives, contacts the debtors to seek repayment. In the case of former students who are in default of educational loans, we estimate that 80% of those contacted establish a realistic repayment schedule. The vast majority of this percentage, perhaps as high as 90%, amortize the indebtedness without the necessity of institution of legal proceedings. In the case of negligent operators of motor vehicles who have damaged state property, such as guardrails,

signs and bridges, the percentage of mutually agreed-upon payment plans is considerably lower; therefore, there is a greater percentage of lawsuits in these cases of alleged negligence.

The legal staff of the Claims Section, currently three assistant attorneys general, reviews all such accounts wherein a satisfactory repayment plan is not reached or maintained. After this review some of these accounts are referred to private counsel according to the criteria to be discussed herein.

SELECTION AND CONTROL OF PRIVATE COUNSEL.

While private counsel had been utilized prior to the establishment of the Claims Section, the current list of 34 Virginia attorneys and one non-Virginia firm with branch offices in several states represents the most comprehensive attempt ever to utilize private sector attorneys to recover Virginia's accounts receivable.

Employment of special counsel to recover such accounts receivable is governed by statute, § 2.1-122(c), (Repl. vol. 1979) which provides:

> In cases of legal services in civil matters to be performed for any state department, institution, division, commission, board, bureau, agency, entity, official, justice of the Supreme Court, or judge of any circuit court or district court where it is impractical or uneconomical for the Attorney General's Office to render same, special counsel may be employed but only upon the written recommendation of the Attorney General, who shall approve all requisitions drawn upon the Comptroller for warrants as compensation for such special counsel before the Comptroller shall have authority to issue such warrants.

Selection is based upon application and review of private counsel's qualifications. The Attorney General or his deputy personally reviews each application. Competition for employment as special counsel is keen; those so selected remain under continuing review. Upon selection, special counsel endorse the letter of appointment, which serves as the contract between the Office of the Attorney General and special counsel, see Appendix D. It has been our experience that the vesting of selection and control of private counsel in the Attorney General, rather than delegating it to the various agencies and institutions, has allowed for greater efficiency in the recovery of our accounts receivable.

As noted in the letter of appointment, monthly status reports are required of special counsel. Counsel's authority to settle a disputed claim is subject to the approval of the agency head, the Attorney General and, in most cases, the Governor, see § 2.1-127 (Repl. vol. 1979), attached hereto as Appendix E.

The Office of the Attorney General, including its Claims Section, is subject to audit by the Auditor of Public Accounts, another agency of the Commonwealth. Similiarly, our Office reserves the right to audit the financial records of private counsel. While our Office has not had any indication of any malfeasance of special counsel, we believe the audit provision to be an essential term of the employment contract. We would recommend inclusion of such a requirement in any contracts with outside counsel pursuant to the authority proposed in Senate Bill 209.

Although not specified in the letter of appointment, special counsel are, of course, subject to the Virginia State Bar's Code of Professional Responsibility. Further, even though attorneys are exempt from the provisions of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, it is the policy of this Office that special counsel and the Claims Section voluntarily adhere to its requirements.

REFERRAL OF CASES TO PRIVATE COUNSEL.

As noted above, referral of selected cases to private counsel is normally done by the Attorney General's Claims Section. Only in a narrow range of accounts receivable does a specified agency refer the matter directly to private counsel. An example of such an agency would be the State Education Assistance Authority, the guarantor for all student loans made in Virginia. Such referrals are made according to Claims Section guidelines and are continually monitored by the Claims Section. The following criteria are used by the Claims Section in the referral of cases to special counsel:

a. appropriate venue (when litigation is anticipated);
b. current caseload of the Claims Section;
c. amount at issue for the particular account;
d. probability of collecting the account; and
e. experience of the selected attorney with the particular cause of action (defaulted student loan, tortious property damage, implied contract for medical services rendered, etc.)

While it is difficult to summarize a general rule utilized in referrals, we often refer cases having a lower amount at issue, i.e. National Direct Student Loans which rarely total $1,500.00, property damage cases under $300.00, etc.

RESULTS AND RECOMMENDATION

Results for the two fiscal years concluding June 30 of 1984 and 1985 strongly indicate the need for continued utilization of counsel from the private sector. In these two years, approximately 1,600 cases with accounts receivable total of approximately $4,250,000 were referred to special counsel. Recoveries through June 30, 1985 totaled $498,173.00 with the prospect of additional recoveries in the near future.

It should be noted that private collection agencies have also been a significant factor in the success of our debt recovery program. In the two fiscal years concluding June 30 of 1984 and 1985, approximately 740 cases with accounts receivable total of $458,049 were referred by the Claims Section. Recoveries through June 30, 1985 totaled $13,464.

Additionally, Virginia's Setoff Debt Collection Act requires that state agencies report outstanding accounts receivable to the Virginia Department of Taxation. The Department of Taxation, after notice to the taxpayer, remits income tax refunds to the state agency/creditor. This remedy, which use is mandatory for state agencies, is in addition to the collection activities controlled by the Claims Section. In the calendar year ending December 30, 1984, the sum of $2,232,127 was returned to the various state agencies pursuant to the Setoff Debt Collection

Act. A copy of this Act §§ 58.1-520 et seq. (Repl. vol. 1984), is attached as Appendix F; the comparable federal statute is 31 U.S.C. § 3720 A.

In summary, we would strongly recommend the utilization of private sector counsel in the proposed amendments to the Federal Debt Recovery Act. Based upon our experience, we would further recommend consideration of: 1) uniformity of referral procedures, and 2) the right of the Attorney General to audit the financial records of private counsel, insofar as such records relate to claims referred under the Federal Debt Recovery Act.

We would take this opportunity to note the difficulty imposed upon all states, including Virginia, in securing repayment of debts by the inability to garnish the salary of employees of the United States. Federal statutes have, in at least three instances, allowed this cloak of sovereign immunity to be lifted: 1) 42 U.S.C. § 656 (Supp. 1985) allows garnishment for child support payments; 2) 31 U.S.C. § 3720A (Supp. 1985) provides that a Federal employee's income tax refund may be reduced by the amount of that employee's indebtedness to the Federal Government, and 3) 5 U.S.C. § 5514 (Supp. 1985) permits installment deductions from an employee's salary for indebtedness due to the United States.

We believe that further amendments to 31 U.S.C. § 3720A and 5 U.S.C. § 5514 to allow similiar provisions for the payment of a Federal employee's indebtedness to the various states would be very beneficial.

In closing, we would like to express again our appreciation for the opportunity to comment upon Senate Bill 209.

APPENDIX A

I. Collection in first ninety days from due date of account.

A. Internal collection procedures should be developed promptly by each agency in accord with guidelines of the Department of Accounts. A copy is to be sent to the Claims Section of the Attorney General's Office. Questions of an internal administrative nature pertaining to the delinquent accounts shall be referred to the Comptroller. An internal collection procedure must include the:

1. Method by which the debtor is informed of:
   a. Amount of debt.
   b. Reason for debt.
   c. Date on which debt became payable.
2. Copies of forms used in collecting debt.
3. Name, position, telephone number of individual responsible for supervising internal collection procedures.
4. Method of reviewing collection progress.
5. Agency's procedure adopted in response to the requirement of the Secretary of Administration and Finance for notifying the Tax Department of claims for set off against tax refunds. Questions concerning the "Set-Off Debt Collection

Act" should be referred to the Department of Taxation.

B. Agencies have 90 days from the account's due date in which to pursue internal collection procedures. If within this period, it is apparent that collection will not be secured without legal assistance, or that compromise of the claim is justified, the account shall be forwarded immediately to the Claims Section of the Attorney General's Office.

C. If the account is payable under an insurance policy or third-party contract and the claim is:

1. Uncontested. Retain until paid, up to 60 days;
2. Denied for technical errors, e.g., erroneous data or incomplete paper work. Correct the error and resubmit the claim;
3. Rejected due to denial of coverage or policy limits reached. The agency shall initiate internal procedures to collect claim;
4. Denied for a reason other than technical error. Discuss the claim with the Assistant Attorney General assigned to the agency to determine handling.

D. Agencies requiring in excess of ninety days to complete internal agency effort shall request an extension from the Claims Section of the Attorney General's Office.

E. An agency may seek legal assistance from the Assistant Attorney General who represents the agency at any time

within the ninety days when it appears necessary to collect the claim or avoid the absence of the debtor or loss of the debtor's assets.

II. Second Ninety Days of Collection Effort - Referral of Accounts

A. Legal assistance - Agencies shall forward uncollected claims to the Claims Section of the Attorney General's Office if legal assistance is necessary to collect claim. Legal assistance is necessary if:

1. Liability is contested; or
2. The claim exceeds $500; or
3. The claim exceeds $100, payment has been refused, the whereabouts of the debtor are known, and there are or will be assets to satisfy claims;
4. Agency personnel have reason to believe legal assistance will secure collection of the claim.
5. Compromise of the claim appears to be in order. Compromise of claims is handled pursuant to § 2.1-127 of the Code.

B. Agency Retention

1. Where the agency has other procedures to secure collections, such as refusal to issue diplomas or transcripts or refusal to issue licenses or permits, it may elect to retain the file pending the results of such procedures.
2. Where the debtor is paying a debt in periodic payments satisfactory to the agency the account

may be retained until account is satisfied.

C. Private Collection Agency

1. If legal assistance is not necessary and the agency lacks other means to secure collection, agencies shall procure the services of a collection agency in accord with policies of the Division of Purchases and Supply.

2. For purposes of estimating the cost of collection services, in the absence of more definitive information, these costs can be estimated at 20% of the total value of collection matters to be referred to a collection agency.

3. Any contract with a collection agency which varies the terms of the form contract approved by this Office should be reviewed and approved by the Claims Section of the Office of the Attorney General prior to execution.

4. The procedures of the Division of Purchases and Supply for procurement of nonprofessional services and the pertinent provisions from the Vendor's manual are appended.

III. Private Collection Agency's Review of Accounts

A. If no collection has resulted from a collection agency's activity after six months, the account shall be returned to the State agency.

1. The account may be retained by the collection agency for an additional period not to exceed

ninety days, if adequate justification is offered the State agency.

2. If the collection agency determines an account is uncollectible during this six month period, it shall return the account to the State agency immediately.

3. If it appears to the collection agency that legal action is likely to effect collection, it will forward the account to the Attorney General's Office at once.

B. The State agency shall reevaluate a returned account and handle the account in one of the following ways:

1. Reassignment to another collection agency for a period of ninety days.

2. Referral to Claims Section of Attorney General's Office.

3. Deferral of further collections activity (write-off) upon a determination of the agency that the account is uncollectible and the Attorney General certifies that further legal measures are not appropriate. These items are to be reported in the "Accounts Written Off But Not Discharged" column of the "Agency Summary of Receivables Report" required by the Comptroller's Directive 5-82. Deferral of further collections activity does not discharge the debt.

IV. Contracts and Fees

A. Fees

1. Private collection agencies are to be compensated on terms agreed to by the State agency, but not to exceed the following maximum amounts of their recoveries:

| Amount of Account | Fees |
|---|---|
| $ 0 - $1,000.00 | 40% |
| $1,001 - $5,000.00 | 25% |
| $5,001 - and over | 20% |

2. If the Attorney General's Office refers an account to a private attorney, the attorney's fees will normally be:

   a. 33-1/3% of the first $500 of recovery.

   b. If collection effected without judgment, 25% of recovery over $500.

   c. If collected after judgment, 33-1/3% of recovery over $500.

   d. Fees and costs are deducted from recoveries.

In exceptional cases an hourly fee may be authorized. A contingency fee in excess of the above may be necessary in some circumstances.

B. The following paragraph shall be inserted in agreements with private collection agencies to exclude the amount collected through tax set-off from calculation of fees due the collection agency:

"The Collector shall not share in funds collected by the Client as a result of exercising authority

for right of offset granted by the Code of Virginia. Client will promptly notify Collector of any offset monies received."

C. Provisions for periodic status reports to the State agencies must be included in any contract with a private collection agency.

V. Reporting

A. State agencies shall send copies of all correspondence with private collection agencies to the Office of the Attorney General, Claims Section, 101 North Eighth Street, Richmond, Virginia 23219.

B The Claims Section will advise the State agency of the action to be taken on any account referred to the Attorney General's Office.

C. Private collection agencies shall make status reports required by the state agencies or the Attorney General's Office.

D. The State agencies shall make periodic reports to the Claims Section of the Attorney General's Office reflecting the status and progress of accounts.

VI. Exceptions

The Attorney General's Office will work with the Office of the Comptroller to issue guidelines to insure the efficiency and effectiveness of State agencies' internal collection procedures. The procedures used by private collection agencies will be reviewed by the Attorney General's Office.

ARTICLE 19.

*Actions by the Commonwealth.*

**§ 8.01-196. Comptroller to institute proceedings.** — The Comptroller shall institute and prosecute all proceedings proper to enforce payment of money to the Commonwealth. (Code 1950, § 8-758; 1977, c. 617.)

**Decisions Under Current Law.**
I. General Consideration.
**Decisions Under Prior Law.**

DECISIONS UNDER CURRENT LAW.

I. GENERAL CONSIDERATION.

Applied in Commonwealth ex rel. Pross v. Board of Supvrs., — Va. —, 303 S.E.2d 887 (1983).

DECISIONS UNDER PRIOR LAW.

Editor's note. — The cases cited below were decided under corresponding provisions of former law. The term "this section," as used below, refers to former provisions.

Collection of money payable under former § 15.1-73. — The Comptroller was granted exclusive authority under this section and § 8.01-198 to institute proceedings to collect money payable under former § 15.1-73 which prohibited city and town officials from having an interest in contracts with or claims against the city or town. Commonwealth v. Holland, 211 Va. 530, 178 S.E.2d 506 (1971).

Applied in Commonwealth v. McCue, 109 Va. 302, 63 S.E. 1066 (1909).

**§ 8.01-197. In what name; when not to abate.** — Any such action shall be in the name of the Commonwealth of Virginia except when it is on a bond payable to, or a contract made with, the Governor or some other person. And then it may be in the name of such Governor or other person for the use of the Commonwealth, notwithstanding such Governor or other person may have died, resigned, or been removed from office before the commencement of the action. And there shall be no abatement thereof, by reason of the death, resignation, or removal from office of any such plaintiff pending the action. (Code 1950, § 8-760; 1977, c. 617.)

**Cross reference.** — For rule of court on substitution of parties, see Rule 3:15.

**§ 8.01-198. Action against whom instituted.** — Any such action may be instituted against any person indebted or liable to the Commonwealth in any way whatever, and against his sureties, and against his and their personal representatives. And it may be made when the debt or liability is created or secured by a bond or other instrument, whether the same be payable to the Commonwealth or to any person acting in a public character on behalf of the Commonwealth, or be for the payment of money or the performance of other duties. Every judgment on any such motion shall be in the name of the Commonwealth. (Code 1950, § 8-761; 1954, c. 550; 1977, c. 617.)

**Cross reference.** — For rules of court that twenty-one days' notice is required, see Rules 3:3, 3:5.

DECISIONS UNDER PRIOR LAW.

Editor's note. — The case cited below was decided under corresponding provisions of former law. The term "this section," as used below, refers to former provisions.

Collection of money payable under former § 15.1-73. — The Comptroller was granted exclusive authority under § 8.01-196 and this section to institute proceedings to collect money payable under former § 15.1-73 which prohibited city and town officials from having an interest in contracts with or claims against the city or town. Commonwealth v. Holland, 211 Va. 530, 178 S.E.2d 506 (1971).

**§ 8.01-199. Judgment, nature of.** — On any such motion, the judgment shall be for so much principal and interest as would be recoverable by action. It may be also for fifteen per centum damages in addition thereto when the proceeding is against a treasurer, sheriff, or other collector, or his sureties, or his or their personal representatives, for taxes or other public money which ought to have been paid into the state treasury. In such proceeding, the court, in pronouncing judgment, may consider all the circumstances, and give judgment for the damages or not, or for such part of the damages, as it may deem proper. (Code 1950, § 8-762; 1977, c. 617.)

**§ 8.01-200. Mistakes against State corrected.** — After a debt to the Commonwealth shall have been paid, if it appear that an error or mistake has been committed to its prejudice, whether before or after the issuing of execution, a motion may be made on ten days' notice against any person liable for the debt, for the amount of such error or mistake, and judgment may be given therefor, without interest or damages thereon. (Code 1950, § 8-763; 1977, c. 617.)

**§ 8.01-201. Execution; real estate to be sold.** — In a writ of fieri facias upon a judgment or decree against any person indebted or liable to the Commonwealth, or against any surety of his, after the words "we command you that of the," the clerk shall insert the words "goods, chattels, and real estate," and conform the subsequent part of such writ thereto. And under any writ so issued, real estate may be taken and sold. (Code 1950, § 8-764; 1977, c. 617.)

**§ 8.01-202. Execution, to whom issued.** — An execution on behalf of the Commonwealth from the Circuit Court of the City of Richmond may, if the Comptroller see fit, be directed to any sheriff, of any political subdivision, and shall be served by any of such officers in whose hands the Comptroller may cause it to be placed. (Code 1950, § 8-765; 1977, c. 617.)

**§ 8.01-203. Goods and chattels liable before real estate.** — Every writ of fieri facias, issued according to § 8.01-201, shall be levied first on the goods and chattels of the person against whose estate such writ issued. If, in the political subdivision, the residence of such person, there are no goods and chattels liable thereto, or not a sufficiency thereof, then the officer having such writ shall levy it on the real estate of such person. (Code 1950, § 8-766; 1977, c. 617.)

**§ 8.01-204. Notice of sale of real estate; when sale to be made.** — When a levy is so made upon real estate, the officer making it shall post notice thereof, and of the time and place of sale, at such public places as may seem to him expedient, and at the front door of the courthouse of the political subdivision in which the real estate is, on a court day. The time of selling real estate shall be not less than sixty nor more than ninety days from the time of posting the notice at the courthouse door. And the sale shall take place at the premises or at the door of the courthouse, as the officer may deem most advisable. (Code 1950, § 8-767; 1977, c. 617.)

**§ 8.01-205. How sale made.** — If the amount of the execution be not sooner paid, such officer shall proceed, on the day mentioned in the notice, to sell at public auction the interest of the party against whom the execution issued in the real estate or so much thereof as the officer may deem sufficient; and if a part only be sold it shall be laid off in one parcel in such place and manner as the debtor or his agent may direct or, if he give no direction, as the officer may deem best. (Code 1950, § 8-768; 1977, c. 617.)

**§ 8.01-206. Terms of sale.** — The sale shall be upon six months' credit; and if the land be not purchased for the Commonwealth, the officer shall take bond of the purchaser, with sureties, for the payment of the purchase money to the Commonwealth. Every such bond shall mention on what occasion the same was taken, and be returned to the office of the court from which the execution issued, and the clerk shall endorse thereon the date of its return. (Code 1950, § 8-769; 1977, c. 617.)

**Cross reference.** — As to effect of bonds given under this section, see §§ 8.01-209, 8.01-210.

**§ 8.01-207. Who to collect purchase money and make deed; disposition of proceeds of sale.** — On or before the maturity of such bond the sheriff or other officer who made the sale shall withdraw the bond from the clerk's office, leaving his receipt therefor and an attested copy thereof, and collect the same. So soon as the purchase money has been paid, the sheriff or other principal officer, or the deputy who acted in making the sale, shall, as commissioner, and in the name of the Commonwealth, convey the land to the purchaser by deed executed at his costs, reciting the execution, the sale and the price of the land. Such deed shall pass to the purchaser all the interest which the party against whom the execution issued had in the land at the date of the judgment or decree. Out of the money so collected the sheriff or officer who made the sale shall pay all costs attending such execution and sale, the costs of a survey, if there was one, all delinquent and unpaid taxes and levies on such land and the debt due the Commonwealth, and the residue, if any, he shall pay to the judgment debtor. (Code 1950, § 8-770; 1977, c. 617.)

**§ 8.01-208. When successor of officer to make deed.** — When the officer and his deputy who acted in making the sale have both died or removed from the Commonwealth before making such deed, the same may be executed by any successor of such officer. (Code 1950, § 8-771; 1977, c. 617.)

**§ 8.01-209. Bond for purchase money to have force of judgment.** — When any bond taken under § 8.01-206 becomes payable and is returned to the office of the court from which the execution issued, it shall have the force of a judgment against such of the obligors therein as may be then alive. Execution may be issued thereon against them. And the same shall be proceeded under in like manner as an execution issued on such a judgment or decree as is mentioned in § 8.01-201, save only that the clerk shall endorse "no security is to be taken," and the officer shall govern himself accordingly and sell for ready money any real estate which he may levy on under the same. (Code 1950, § 8-772; 1977, c. 617.)

**§ 8.01-210. Judgment against deceased obligors.** — A judgment may be obtained against the survivors of a deceased obligor of a bond taken under the provisions of § 8.01-206 by an action at law against the personal representative of such obligor. (Code 1950, § 8-773; 1954, c. 550; 1977, c. 617.)

**§ 8.01-211. When venditioni exponas issued to sheriff of adjacent county; what to contain.** — When return is made on any execution on behalf of the Commonwealth that goods, chattels or real estate remain unsold for want of bidders, or to that effect, the clerk of the court from which such execution issued shall, when required by the Comptroller, issue a writ of venditioni exponas, directed to the sheriff of any county adjacent to that in which the levy was made that the Comptroller may designate. Such writ shall recite the execution under which the levy was made, the nature of such levy and return that the property remains unsold for the want of bidders and shall command the sheriff of such adjacent county, if the property remaining unsold be goods or chattels, to go into the county in which the levy was made and receive the same from the officer that made the levy and, whether the property be goods, chattels, or real estate, to sell the same. (Code 1950, § 8-774; 1977, c. 617.)

DECISIONS UNDER PRIOR LAW.

**Liability of purchaser who gets no land.** — Where a sale was made of judgment debtor's interest in land under writ of venditioni exponas in behalf of the Commonwealth, which interest was absorbed by liens paramount to the writ, the purchaser must pay the price though he may get no land. Spotts v. Commonwealth, 85 Va. 531, 8 S.E. 375 (1888).

Applied, as to invalid writ, in Sutton v. Marye, 81 Va. 329 (1886).

**§ 8.01-212. Officer to deliver to sheriff goods and chattels levied on.** — The officer who made the levy shall deliver the goods and chattels to the sheriff to whom such writ of venditioni exponas may be directed, upon such sheriff's producing to him such writ and executing a receipt for such goods and chattels. If the officer shall fail to deliver the same and return be made on such writ to that effect, the court from which it issued, upon motion, may give judgment against him and his sureties for the whole sum that the execution amounted to at the time of such failure, with interest thereon from that time. (Code 1950, § 8-775; 1977, c. 617.)

**§ 8.01-213. Where same to be sold.** — The sheriff to whom such writ of venditioni exponas is directed, shall sell the goods and chattels in the county where received, if they can be sold therein, and if not he shall cause them to be removed to the courthouse of his own county and there sold. The removal shall be at the costs of the party against whom the execution issued, and the sale under the execution shall be to raise the cost of removal, in addition to the amount which it would otherwise have been necessary to raise. (Code 1950, § 8-776; 1977, c. 617.)

**§ 8.01-214. Where real estate to be sold.** — Such sheriff shall also sell the real estate levied on in the county wherein the levy was made, if it can be done, and if it cannot he shall make the sale at the courthouse of his own county. (Code 1950, § 8-777; 1977, c. 617.)

**§ 8.01-215. Return of officer when sale not made because of prior encumbrance.** — In any case in which an officer, having an execution on behalf of the Commonwealth, shall decline levying it because of any previous conveyance, execution, or encumbrance, a return shall be made setting forth

the nature of such conveyance, execution or encumbrance, in whose favor, and for what amount, and the court in which the conveyance or encumbrance is recorded, or from which the execution issued. (Code 1950, § 8-778; 1977, c. 617.)

DECISIONS UNDER PRIOR LAW.

**Editor's note.** — The case cited below was decided under corresponding provisions of former law. The term "this section," as used below, refers to former provisions.

**State's right to resort to court of equity.** — The failure of an officer to comply with the provisions of this section did not affect the right of the State to pursue its remedy in a court of equity. Moreover, the right to sell the real estate of the defendants under execution did not deprive the State of the right, if it elected to exercise it, to resort to a court of equity to subject such real estate to the lien of its judgment. Commonwealth v. Ford, 70 Va. (29 Gratt.) 683 (1878).

**§ 8.01-216. Comptroller's power to adjust old claims.** — The Comptroller, with the advice of the Attorney General, may adjust and settle upon equitable principles, without regard to strict legal rules, any doubtful or disputed account or claim in favor of the Commonwealth which may have been standing on the books of his office not less than two years, and may, with the like advice, dismiss any proceedings instituted by him; but before such adjustment or settlement can in any wise affect the rights of the Commonwealth it shall be approved and endorsed by the Attorney General and shall then be submitted to the supervision of the judge of the Circuit Court of the City of Richmond, accompanied by a written statement signed by the Comptroller of the facts and reasons which, in his opinion, render such adjustment or settlement just and proper. When such judge endorses the same with his written approval, signed in his official character, it shall be considered and treated as valid and binding. (Code 1950, § 8-779; 1977, c. 617.)

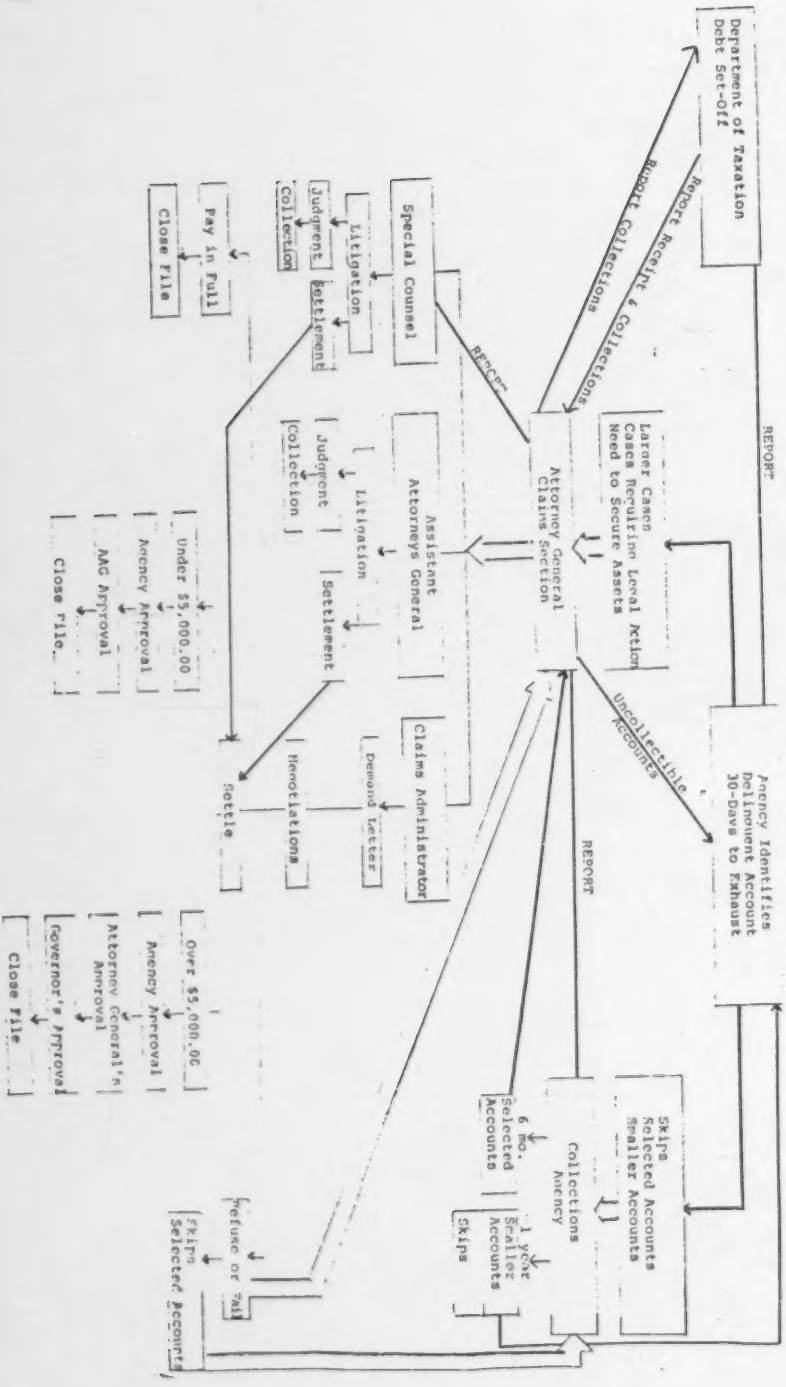
**This section has no application to the submission by the Auditor (now Comptroller) to the judgment of a court of competent jurisdiction, and a settlement made in good faith, by and with the advice and consent of the Attorney General, who represented and conducted the litigation on behalf of the Commonwealth, is binding on both litigants. Commonwealth v. Schmelz, 116 Va. 62, 81 S.E. 45 (1914).**

ARTICLE 20.

*Change of Name.*

**§ 8.01-217. How name of person may be changed.** — Any person desiring to change his own name, or that of his child or ward, may apply therefor to the circuit court of the county or city in which the person whose name is to be changed resides, or if no place of abode exists, such person may apply to any circuit court which shall consider such application if it finds that good cause exists therefor under the circumstances alleged. However, no application shall be accepted from any person who is incarcerated in any adult or juvenile correctional facility or jail, or who is a probationer unless the court finds that good cause exists for consideration of such application from such probationer under the circumstances alleged. In case of a minor who has no living parent or guardian, the application may be made by his next friend. In case of a minor who has both parents living, the parent who does not join in the application shall be served with reasonable notice of the application and, should such parent object to the change of name, a hearing shall be held to determine whether the change of name is in the best interest of the minor. If, after application is made on behalf of a minor and an ex parte hearing is held thereon, the court finds by clear and convincing evidence that such notice

APPENDIX C


CLAIMS PROCEDURE -- GENERAL
Department of Taxation
Debt Set-Off
Report Collections
Report Receipt & Collections
REPORT
Agency Identifies
Delinquent Account
30-Days to Exhaust
Larger Cases
Cases Requiring Legal Action
Need to Secure Assets
Attorney General
Claims Section
Uncollectible
Accounts
REPORT
Special Counsel
Report
Assistant
Attorneys General
Claims Administrator
Litigation
Judgment
Collection
Settlement
Demand Letter
Pay in Full
Close File
Under $5,000.00
Agency Approval
AAG Approval
Close File
Over $5,000.00
Agency Approval
Attorney General's
Approval
Governor's Approval
Close File
Settle
Memorializations
Refuse or Fail
Skips
Selected Accounts
6 mo.
Selected
Accounts
1 year
Smaller
Accounts
Skips
Collections
Agency
Skips
Selected Accounts
Smaller Accounts

APPENDIX D

Gerald L. Baliles
Attorney General

William G. Broaddus
Chief Deputy Attorney General

# COMMONWEALTH of VIRGINIA

*Office of the Attorney General*

Donald C. J. Gehring
Deputy Attorney Gener
Criminal Law Enforcement D

Maston T. Jacks
Deputy Attorney Gener
Human & Natural Resources D

Walter A. McFarlane
Deputy Attorney Gener
Finance & Transportation Di

James T. Moore, III
Deputy Attorney Gener
Judicial Affairs Division

Marian W. Schutrumpf
Director of Administratio

May 31, 1985

Jonesville, Virginia 24263

Dear

It is my pleasure to advise you of your appointment by the Attorney General as special counsel for handling certain collections and claims for the Commonwealth of Virginia.

The following is intended to provide you with additional information on the way our program is administered.

Collection efforts for the Commonwealth are conducted by the affected State agencies for an initial period. If collection is not secured within that period, the file may be turned over to a private collection agency. If the file requires legal action, it is generally sent to this Office. If we determine the file should be handled by special counsel, we will forward the file to you. Agencies with a large volume of accounts, such as the State Education Assistance Authority (SEAA), the Medical College of Virginia, or the University of Virginia Hospital, will refer files directly to you.

Certain reporting requirements are essential. The attached forms are for you to remit a monthly status report on the cases in your possession. You may use a computer printout which provides the same information. You need not include SEAA cases on the report. Some State agencies have federal reporting requirements which may require different reports submitted directly to you. Likewise, some agencies may require different billing procedures.

Files on which the debtor cannot be located should be returned to this Office when you cease efforts to locate them. Any file with no collection in a year should be returned to this Office automatically, unless the time is extended by agreement. I would expect to extend the time when doing so is likely to produce collection. No file should be referred to another attorney without approval of this Office.

Suits on behalf of the Commonwealth are exempt from payment

of most fees. See § 14.1-87 (Code of Virginia, 1981 Repl. Vol.). Attached are two Opinions of the Attorney General which can help in the event a clerk or sheriff may not be aware of the full ramifications of the statute. If fees are required, we will reimburse you for them upon prior request and approval, and reimburse the Office for recoveries. Judgments should be docketed, unless you know that payment will be forthcoming upon obtaining judgment. You will receive some files for highway property damage and damage to State Police cars. Judgment should be taken (serving the Secretary of the Commonwealth if the defendant is out of State or cannot be located) and the Division of Motor Vehicles notified.

Settlements are controlled by § 2.1-127 (Code of Virginia, 1979 Repl. Vol.). It is necessary that the Governor and Attorney General approve, in writing, compromises of most claims over $5,000. Both the Governor and Attorney General scrutinize these matters carefully, and reject recommendations which, in their judgment, fail to protect the Commonwealth's interest to the maximum extent consistent with the facts of the case. We recommend that when you receive a reasonable offer within ten days of trial, you continue the case to allow time for the settlement to be finalized. You can represent to counsel that you will accept the settlement subject to obtaining the required approvals.

Your fees will be 33-1/3% on the first $500 of recoveries. On amounts in excess of $500, you are to receive 25% of recoveries prior to judgment and 33-1/3% of recoveries after judgment. Remit recoveries in the form of a check to this Office, drawn on your firm. You may deduct your fees and costs. On referrals of defaulted loans guaranteed by SEAA, the rate is 30% of any recovery. Your fee and costs will be reimbursed to you by that agency. You will be given special instructions by SEAA when files are referred to you. Occasionally, we request services to be performed on an hourly basis at a rate of $60.00 per hour. Examples of such services would be obtaining and docketing specifically requested judgments or obtaining execution upon a previously identified asset.

Our auditors require us to reserve the right to inspect the file and your records with respect to any accounts you handle for us. Should your appointment be withdrawn or you resign this appointment, we reserve the right to require the return of any or all of the accounts in your possession, along with copies of pleadings, correspondence, and documents showing all actions taken and all information on the debtor's location and assets. You, of course, could retain those files on which debtors are

making payments, and continue to administer the collection.

We are looking forward to a successful and enjoyable professional relationship with you. Your success will be of importance to the Commonwealth in maintaining the integrity of its financial management policies. If you have any questions, please contact me. Please acknowledge your acceptance of the conditions of this appointment by signing and returning the attached copy of this letter.

Sincerely,

Guy W. Horsley, Jr.
Senior Assistant Attorney General

2-C251/54

Attachments

Accepted:

_____

**§ 2.1-127. Compromise and settlement of disputes.** — The Attorney General shall have the authority to compromise and settle disputes, claims and controversies involving the interests of the Commonwealth, and to discharge any such claims, but only after the proposed compromise, settlement or discharge, together with the reasons therefor, have been submitted in writing to the Governor and approved by him. Where any dispute, claim or controversy involves the interests of any State department, institution, division, commission, board or bureau, the Attorney General shall have authority to compromise and settle or discharge the same provided such action be approved both by the Governor, in the manner above provided, and by the head of the State department, institution, division, board or bureau which is interested; provided that where any dispute, claim or controversy involves the interests of any State department, institution, division, commission, board or bureau, and the amount in dispute does not exceed five thousand dollars, the Attorney General or an assistant Attorney General assigned to such department, institution, division, commission, board or bureau shall have the authority to compromise and settle or discharge the same provided such action be approved by the head of the State department, institution, division, board or bureau whose interests are in issue; provided, further, that when the dispute, claim or controversy involves a case in which the Commonwealth has a claim for sums due it as the result of hospital, medical or dental care furnished by or on behalf of the Commonwealth, the Attorney General or such assistant Attorney General shall have the authority to compromise and settle and discharge the same when the amount in dispute does not exceed fifty thousand dollars. (Code 1950, § 2-92; 1956, c. 387; 1966, c. 677; 1973, c. 219; 1979, c. 266.)

**The 1979 amendment** substituted "five thousand dollars" for "one thousand dollars" near the middle of the first proviso to the second sentence and added the second proviso to the second sentence.

**§ 2.1-128. Annual report.** — The Attorney General shall annually, on or before the first day of December, deliver to the Governor a report of the State and condition of all causes in which he has appeared for the Commonwealth in the courts or before the State Corporation Commission during the preceding fiscal year, as well as other important matters in which he has represented the State during the year. He shall also include in his report such official opinions rendered by him as he believes to be of general interest or helpful in promoting uniformity in the construction of the laws of the State. (Code 1950, § 2-93; 1966, c. 677.)

**§ 2.1-129. Division of War Veterans' Claims.** — The Attorney General is hereby authorized, with the approval of the Governor, to establish, equip and operate such offices for a Division of War Veterans' Claims as may be necessary and desirable to render adequate assistance to veterans of the armed forces of the United States, their widows, orphans and dependents, domiciled in Virginia, in matters of rehabilitation and in the preparation, presentation and prosecution of all lawful claims by, or on behalf of, such veterans, their widows, orphans and dependents, to obtain the benefit of their rights and privileges under various federal, State and local laws enacted for their benefit; and for these purposes the Attorney General is authorized to employ such personnel as may, in his judgment, be necessary for the proper operation of such offices and for the proper discharge of the duties and functions of such Division; the compensation of such personnel to be determined by the Attorney General with the written approval of the Governor.

Such offices shall be so located as to render the service of the Division conveniently available to such veterans, their widows, orphans and dependents.

preceding taxable year and such preceding year was a taxable year of twelve months.

2. An amount equal to the tax computed at the rate applicable to the taxable year but otherwise on the basis of the facts shown on the return of the corporation for, and the law applicable to, the preceding taxable year.

3. An amount equal to ninety percent of the tax for the taxable year computed by placing on an annualized basis the taxable income:

a. For the first three months of the taxable year, in the case of the installment required to be paid in the fourth month,

b. For the first three months or for the first five months of the taxable year, in the case of the installment required to be paid in the sixth month,

c. For the first six months or for the first eight months of the taxable year, in the case of the installment required to be paid in the ninth month, and

d. For the first nine months or for the first eleven months of the taxable year, in the case of the installment required to be paid in the twelfth month of the taxable year. For purposes of this paragraph, the taxable income shall be placed on an annualized basis by (i) multiplying by twelve the taxable income referred to in paragraph 3, and (ii) dividing the resulting amount by the number of months in the taxable year (three, five, six, eight, nine, or eleven, as the case may be) referred to in paragraph (A).

E. For purposes of subsections B, D 2 and D 3, the term "tax" means the excess of the tax imposed by this chapter over the sum of any credits allowable against the tax.

F. The application of this to taxable years of less than twelve months shall be in accordance with regulations prescribed by the Commissioner. (Code 1950, § 58-151.40; 1968, c. 14; 1977, c. 396; 1983, c. 575; 1984, c. 675.)

## Article 21.

### *Setoff Debt Collection Act.*

**§ 58.1-520. Definitions. — As used in this article:**

*"Claimant agency"* means any administrative unit of state, county, city or town government, including "department," "institution," "commission," or "authority." The office of Executive Secretary of the Supreme Court and any circuit or district court may participate as a claimant agency. The State Comptroller shall prepare a list of all such agencies eligible for participation in this setoff program and shall continuously update such list and shall provide such list to the Department by October 15, of each year.

*"Debtor"* means any individual having a delinquent debt or account with any claimant agency which obligation has not been adjudicated, satisfied by court order, set aside by court order, or discharged in bankruptcy.

*"Delinquent debt"* means any liquidated sum due and owing any claimant agency, including any amount of court costs or fines which have accrued through contract, subrogation, tort, operation of law, or any other legal theory regardless of whether there is an outstanding judgment for that sum which is legally collectible and for which a collection effort has been or is being made.

*"Refund"* means any individual's Virginia income tax refund payable pursuant to § 58.1-309. This term also includes any refund belonging to a debtor resulting from the filing of a joint income tax return or a refund belonging to a debtor resulting from the filing of a return where husband and wife have elected to file a combined return and separately state their Virginia taxable incomes under the provisions of § 58.1-324 B 2. (Code 1950, § 58-19.7; 1981, c. 408; 1982, c. 621; 1983, c. 545; 1984, cc. 269, 675.)

Editor's note. — Pursuant to § 9-77.11 and Acts 1984, c. 675, cl. 5, effect has been given in this section as set out above to Acts 1984, c. 269, which amended former § 58-19.7, the comparable provision in former Title 58.

Acts 1984, ch. 269, inserted "and any circuit or district court" in the second sentence of the definition of "claimant agency," inserted "including any amount of court costs or fines" and substituted "have accrued" for "has accrued" in the definition of "delinquent debt," and substituted "also includes" for "shall also include" in the second sentence of the definition of "refund."

**§ 58.1-521. Remedy additional; mandatory usage; obtaining identifying information.** — A. The collection remedy under this article is in addition to and not in substitution for any other remedy available by law.

B. Except for county, city or town governments, which may utilize the provisions of this article, all claimant agencies shall submit, for collection under the procedure established by this article, all delinquent debts which they are owed.

C. All claimant agencies, whenever possible, shall obtain the full name, social security number, address, and any other identifying information, required by rules promulgated by the Tax Commissioner for implementation of this article, from any person for whom the agencies provide any service or transact any business and who the claimant agencies can foresee may become a debtor under the terms of this article. (Code 1950, § 58-19.8; 1981, c. 408; 1983, c. 258; 1984, cc. 675, 720.)

Editor's note. — Pursuant to § 9-77.11 and Acts 1984, c. 675, cl. 5, effect has been given in this section as set out above to Acts 1984, c. 720, which amended former § 58-19.8, the comparable provision in former Title 58.

Acts 1984, c. 720, substituted "Tax Commissioner" for "Secretary of Administration and Finance" in subsection C.

**§ 58.1-522. Participation in setoff program not permitted where debt below certain levels.** — If the claimant agency determines that the administrative cost, as defined in the rules promulgated by the Tax Commissioner, of utilizing this article will exceed the amount of the delinquent debt, then such claimant agency shall not participate in the setoff program below such levels determined economically infeasible. (Code 1950, § 58-19.9; 1981, c. 408; 1982, c. 621; 1984, cc. 675, 720.)

Editor's note. — Pursuant to § 9-77.11 and Acts 1984, c. 675, cl. 5, effect has been given in this section as set out above to Acts 1984, c. 720, which amended former § 58-19.9, the comparable provision in former Title 58.

Acts 1984, c. 720, substituted "Tax Commissioner" for "Secretary of Administration and Finance."

**§ 58.1-523. Department to aid in collection of sums due claimant agencies through setoff.** — Subject to the limitations contained in this article, the Department, upon request, shall render assistance in the collection of any delinquent account or debt owing to any claimant agency. This assistance shall be provided by setting off any refunds belonging to the debtor from the Department by the sum certified by the claimant agency as due and owing. (Code 1950, § 58-19.10; 1981, c. 408; 1982, c. 621; 1984, c. 675.)

**§ 58.1-524. Notification of Department by claimant agency; action of Department.** — A. A claimant agency seeking to attempt collection of a delinquent debt through setoff shall notify in writing the Department and supply information necessary to identify the debtor whose refund is sought to be setoff. Notification to the Department and the furnishing of identifying information must occur on or before a date specified by the Department in the year

preceding the calendar year during which the refund would be paid. Additionally, subject to the notification deadline specified above, the notification shall be effective only to initiate setoff for claims against refunds that would be made in the calendar year subsequent to the year in which notification is made to the Department.

B. The Department, upon receipt of notification, shall determine whether the debtor to the claimant agency is entitled to a refund from the Department. Upon determination by the Department that a debtor specified by claimant agency qualifies for such a refund, the Department shall notify in writing the claimant agency that a refund is pending, specify its sum, and indicate the debtor's address as listed on the tax return.

C. The Department, upon certification as hereinafter provided in this article, shall set off the certified debt against the refund to which the debtor would otherwise be entitled. (Code 1950, § 58-19.11; 1981, c. 408; 1982, c. 621; 1984, c. 675.)

**§ 58.1-525. Notification of intention to set off and right to hearing.** — A. The claimant agency, upon receipt of notification from the Department that a debtor is entitled to a refund, within ten days shall mail a written notification to the debtor at his or her last known address and shall send a copy of same to the Department of its assertion of rights to the refund or any part thereof. The notification shall inform the debtor of the claimant agency's intention to direct the Department to apply the refund or any portion thereof against the debt certified as due and owing. For the Department to be obligated to continue holding refunds until receipt of certification of the debt, if any, pursuant to § 58.1-528, the copy of the notification to the debtor by the claimant agency of its intention to set off must be received by the Department within fifteen days of the date of the Department's mailing to the respective claimant agency the notification of the debtor's entitlement to a refund.

B. The contents of the written notification to the debtor and the Department's copy of the setoff claim shall clearly set forth the basis for the claim to the refund, the intention to apply the refund against the debt to the claimant agency, the debtor's opportunity to give written notice of intent to contest the validity of the claim before the claimant agency within thirty days of the date of the mailing of the notice, the mailing address to which the application for a hearing must be sent, and the fact that failure to apply for a hearing in writing within the thirty-day period will be deemed a waiver of the opportunity to contest the claim causing final setoff by default.

C. The written application by the debtor for a hearing shall be effective upon mailing the application postage prepaid and properly addressed to the claimant agency. (Code 1950, § 58-19.12; 1981, c. 408; 1982, c. 621; 1984, c. 675.)

**§ 58.1-526. Hearing procedure; hearing sites.** — A. If a claimant agency receives written application of the debtor's intention to contest at hearing the claim upon which the intended setoff is based, it shall grant a hearing according to procedures established by that agency under its operating statutes to determine whether the claim is valid. The Tax Commissioner may designate such sites as may be appropriate at which hearings will be held. Such hearing sites shall be chosen with due regard to the various geographic regions of the Commonwealth where debtors may reside. Additionally, it shall be determined at the hearing whether the claimed sum asserted as due and owing is correct, and if not, an adjustment to the claim shall be made.

B. Pending final determination at hearing of the validity of the debt asserted by the claimant agency, no action shall be taken in furtherance of collection through the setoff procedure allowed under this article.

C. No person hearing the debtor's application contesting the claimant agency's claim shall have been involved in the prior circumstances which have culminated in such dispute.

D. No issue may be considered at the hearing which has been previously litigated. (Code 1950, § 58-19.13; 1981, c. 408; 1982, c. 621; 1984, cc. 675, 720.)

**Editor's note.** — Pursuant to § 9-77.11 and Acts 1984, c. 675, cl. 5, effect has been given in this section as set out above to Acts 1984, c. 720, which amended former § 58-19.13, the comparable provision in former Title 58.

Acts 1984, c. 720, substituted "Tax Commissioner" for "Secretary of Administration and Finance" in the second sentence of subsection A.

**§ 58.1-527. Appeals from hearings.** — A. Within ten days after the decision of the claimant agency upon a hearing pursuant to § 58.1-526 has become final, the debtor aggrieved thereby may secure judicial review thereof by commencing an action in the circuit court of the county or of the city, or if the city has no circuit court, then in the circuit court of the county in which such city is geographically located, in which the debtor resides or in which the principal office of the claimant agency is geographically located. In such action against the claimant agency for review of its decision, the claimant agency shall be named a defendant in a petition for judicial review.

B. Such petition shall also state the grounds upon which review is sought, shall be served upon the head of the claimant agency or upon such person as the claimant agency may designate. With its answer, the claimant agency shall certify and file with the court all documents and papers and a transcript of all testimony taken in the matter, together with its findings of fact and decision therein. In any judicial proceedings under this article, the findings of the claimant agency as to the facts shall be sustained if supported by the evidence. Such actions and the questions so certified shall be heard in a summary manner at the earliest possible date. An appeal may be taken from the decision of such court to the Supreme Court in conformity with the general law governing appeals in equity cases.

C. It shall not be necessary in any proceeding under this section to enter exceptions to the rulings of the claimant agency, and no bond shall be required upon an appeal to any court. (Code 1950, § 58-19.14; 1981, c. 408; 1982, c. 621; 1984, c. 675.)

**§ 58.1-528. Certification of debt by claimant agency; finalization of setoff.** — A. Upon final determination of the debt due and owing the claimant agency or upon the debtor's default for failure to comply with § 58.1-525, the claimant agency shall within twenty days certify the debt to the Department and in default thereof, the Department shall no longer be obligated to hold the refund for setoff.

B. Upon receipt by the Department of a certified debt from the claimant agency, the Department shall finalize the setoff by transferring the proceeds collected for credit or payment in accordance with the provisions of § 58.1-532 and by refunding any remaining balance to the debtor as if setoff had not occurred. (Code 1950, § 58-19.15; 1981, c. 408; 1982, c. 621; 1984, c. 675.)

**§ 58.1-529. Notice of final setoff.** — Upon the finalization of setoff under the provisions of this article, the Department shall notify the debtor in writing of the action taken along with an accounting of the action taken on any refund. If there is an outstanding balance after setoff, the notice under this section shall accompany the balance when disbursed. (Code 1950, § 58-19.16; 1981, c. 408; 1984, c. 675.)

**§ 58.1-530. Priorities in claims to be setoff.** — Priority in multiple claims to refunds allowed to be setoff under the provisions of this article shall be in the order in time which a claimant agency has filed a written notice with the Department of its intention to effect collection through setoff under this article. However, claims filed by any administrative unit of state government shall have priority over claims filed by any county, city or town. Notwithstanding the priority set forth above according to time of filing, the Department has priority over all other claimant agencies for collection by setoff whenever it is a competing agency for a refund. (Code 1950, § 58-19.17; 1981, c. 408; 1983, c. 545; 1984, c. 675.)

**§ 58.1-531. Disposition of proceeds collected; Department's annual statement of costs.** — A. Upon effecting final setoffs, the Department shall periodically pay to the respective claimant agencies the proceeds collected on their behalf. However, with respect to amounts collected under this article for any county, city or town, the Department is authorized to deduct a sum, not in excess of twenty-five percent of the amount collected, to offset the cost of making such collection.

B. The Department shall provide the Governor with an annual statement setting forth the Department's cost of administering this article. (Code 1950, § 58-19.18; 1981, c. 408; 1982, c. 621; 1983, c. 545; 1984, cc. 675, 720.)

**Editor's note.** — Pursuant to § 9-77.11 and Acts 1984, c. 675, cl. 5, effect has been given in this section as set out above to Acts 1984, c. 720, which amended former § 58-19.18, the comparable provision in former Title 58.

Acts 1984, c. 720, substituted "Governor" for Secretary of Administration and Finance" in subsection B.

**§ 58.1-532. Accounting to claimant agency; confidentiality; credit to debtor's obligation.** — A. Simultaneously with the transmittal of proceeds collected to a claimant agency, the Department shall provide the agency with an accounting of the setoffs finalized for which payment is being made. The accounting, whenever possible, shall include the full names of the debtors and the debtors' social security numbers. No federal tax return information shall be divulged by the Department under any circumstances.

B. Upon receipt by a claimant agency of proceeds collected on a claimant agency's behalf by the Department and an accounting of the proceeds as specified under this section, the claimant agency shall credit the debtor's obligation. (Code 1950, § 58-19.19; 1981, c. 408; 1982, c. 621; 1984, c. 675.)

**§ 58.1-533. Confidentiality exemption; use of information obtained.** — A. Notwithstanding § 58.1-3 or any other provision of law prohibiting disclosure by the Department of the contents of taxpayer records or information and notwithstanding any confidentiality statute of any claimant agency, all information exchanged among the Department, claimant agency, and the debtor necessary to accomplish and effectuate the intent of this article shall be lawful.

B. The information obtained by a claimant agency from the Department in accordance with the exemption allowed by subsection A shall only be used by a claimant agency in the pursuit of its debt collection duties and practices and any person employed by, or formerly employed by, a claimant agency who discloses any such information for any other purpose, except as otherwise allowed by § 58.1-3, shall be penalized in accordance with the terms of that section. (Code 1950, § 58-19.20; 1981, c. 408; 1982, c. 621; 1984, c. 675.)

**§ 58.1-534. Rules and regulations.** — The Tax Commissioner shall promulgate all rules which he deems necessary in order to implement the intent of this article. (Code 1950, § 58-19.21; 1981, c. 408; 1984, cc. 675, 720.)

**Editor's note.** — Pursuant to § 9-77.11 and Acts 1984, c. 675, cl. 5, effect has been given in this section as set out above to Acts 1984, c. 720, which amended former § 58-19.21, the comparable provision in former Title 58.

Acts 1984, c. 720, substituted "Tax Commissioner" for "Secretary of Administration and Finance."

## CHAPTER 4.

RESERVED.

## CHAPTER 5.

RESERVED.

## CHAPTER 6.

RETAIL SALES AND USE TAX.

Sec.
58.1-600. Short title.
58.1-601. Administration of chapter.
58.1-602. Definitions.
58.1-603. Imposition of sales tax.
58.1-604. Imposition of use tax.
58.1-605. To what extent and under what conditions cities and counties may levy local sales taxes; collection thereof by State and return of revenue to each city or county entitled thereto.
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58.1-607. Moving residence or business into State.
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58.1-636. Penalty for failure to file return or making false return.
58.1-637. Bad checks.
58.1-638. Disposition of state sales and use tax revenue; localities' share.

**§ 58.1-600. Short title.** — This chapter shall be known and may be cited as the "Virginia Retail Sales and Use Tax Act." (Code 1950, § 58-441.1; 1966, c. 151; 1984, c. 675.)

PREPARED STATEMENT OF PERRY MICHAEL

Mr. Chairman and Members of the Committee, my name is Perry Michael. I am First Assistant to Attorney General Michael Bowers of Georgia. Mr. Bowers regrets that he is unable to be here today. I will not be taking a position on the bill itself, but rather will attempt to relate Georgia's experience with collecting debts. Specifically, we were requested to address four points:

(1) The Attorney General's experience in using private sector counsel in debt collection cases;

(2) The number of cases referred to outside counsel;

(3) The time frames for resolving these cases; and

(4) The results achieved in this program.

Georgia collection litigation originates in a variety of State agencies and programs. It includes, for example, unpaid regulatory and inspection fees, suits on account for goods sold in the prison industries program, overpayments in State employee health and retirement programs, and unpaid patient bills for medical services furnished in State hospitals. This category of debt makes up approximately 50% of the collection litigation caseload. The remaining 50% of the caseload comes from student loan programs.

Until 1970, the approach to small, routine, repetitive type collections was somewhat disorganized. At that time, the Attorney General, with the cooperation of State agency heads, set up a program to handle delinquent accounts. Whereas delinquencies had previously been referred to the Attorney General on a more or less sporadic basis -- and not

infrequently after statutes of limitation had run -- the new program encouraged agency business offices to monitor accounts routinely and to begin collection efforts promptly.

Today, when an agency is unable to collect a debt without legal assistance, the transaction is referred to the Attorney General. The Attorney General has an employment agreement with a lawfirm engaged in the private practice of law. Collections are referred to the private firm with a minimum of administrative effort. The private firm currently employed by the Attorney General has provided economical, efficient service for 15 years through its well-established, 35-year-old collection department. The fees paid the private firm are computed from standard rates for these services and represent a percentage of the money actually collected for the State. Thus, the State pays a fee only when the debt has been collected and the money has been remitted to the State.

The Attorney General refers approximately 150 collection cases per month to the private firm. The 26 State agencies serviced in this program have approximately 4,500 separate cases which are presently in the hands of private counsel for collection. Approximately 50% of these case files originated in defaulted student loans. The average range of a student loan collection file is $1,000 to $3,000. Other collection files typically represent much smaller sums. For example, the average range of a collection file generated in the Department of Human Resources is $400 to $800. I believe it would be

instructive to look just briefly at the recoupment in the student loan program.

The Georgia Higher Education Assistance Corporation has guaranteed more than one-half billion dollars in educational loans for students in the past 20 years. According to the agency, its experience through June 30, 1985, regarding collection efforts on defaulted student loans, as reflected on its last quarterly report to the United States Department of Education, indicates that the corporation has purchased 13,442 delinquent accounts totaling $28,306,907 from its lending institutions. The ratio of delinquent claims purchased to matured paper, therefore, is 9.2 percent. This purchase rate continues to decline each year.

Of the $28,306,907 defaulted accounts purchased, the Higher Education Assistance Corporation has, through the combined use of its own collections personnel, a private collection agency, and the services of the Attorney General and his retained outside counsel, effected cumulative actual cash collections of $12,737,003 through June 30, 1985. This represents a current recovery rate of 45 percent which has been increasing each year as indicated by our FY 1985 activity. During FY 1985 the corporation purchased default claims totalling $4,443,195; during that same year the corporation collected $2,326,830, which equals 52.4 percent of the dollar volume of the claims.

Georgia makes a timely, consistent and persistent effort to collect on defaulted student loans. The Georgia guaranty agency first uses its own in-house collection agents to make

collection of such loans wherever possible. If they are not able to establish a satisfactory repayment arrangement with a debtor, they then refer the account to a private collection agency or to the Attorney General's office depending on the individual circumstances. Accounts referred to the private collection agency are likewise generally transferred to the Attorney General's office at a later date if the efforts of the private collection agency are unsuccessful. Over 4,000 accounts, 33 percent of all defaulted accounts purchased to date, have been collected in full. The $12,737,003 in recoveries referred to above have been collected by the three entities as follows:

In-house collections $6,539,716

Private collection agency $1,989,331

Attorney General's office and retained outside counsel $4,207,956

An increasing number of accounts have been referred to the Attorney General's office for assistance during the past few years.

Turning to time frames for the resolution of cases, it appears that factors in each case tend to make time frames somewhat variable. In general, a decision to pursue or to abandon a case can be made within 30 days. The average time to collect a debt would generally fall somewhere between 30 days and one year. Collection varies, of course, according to the economic circumstances of the individual debtor. Collections for the Department of Human Resources are usually slower

because the individual debtor is typically poorer and frequently does not work regularly. Payout periods vary according to the ability of the debtor to pay.

The usefulness of the collection program can be measured in terms of the results achieved as well as by other yardsticks which may be just as important as the actual dollars collected. In terms of dollars, the private firm produced collections for FY 85 of approximately $1,161,770. For the months of June, July and August of 1985, collections were approximately $128,000, $113,000, and $150,000, respectively. Projecting a yearly average, we would anticipate referring approximately $2,160,000 to the firm next fiscal year for collection; we would anticipate actual collections of approximately $1,572,000. We are satisfied that the effort and money expended have produced entirely satisfactory results. Results in dollars vary from case to case. For example, actual collections in dollars and per case are much higher on student loan files. This merely reflects the ability of the debtor to pay the debt when the legal process is brought to bear. The program is operated from a business point of view for the purpose of collecting debts due the State of Georgia. Its vigorous pursuit for 15 years has required those who are able to pay to pay their debts, although the legal process has shown that some debts, from a business point of view, are uncollectible. Nevertheless, the record as a whole generated by this 15-year effort in Georgia shows that the program is efficient and successful. Thank you.

TESTIMONY OF

DR. DOLORES E. CROSS, PRESIDENT

NEW YORK STATE HIGHER EDUCATION SERVICES CORPORATION

BEFORE THE

SENATE SUBCOMMITTEE ON ENERGY,
NUCLEAR PROLIFERATION, AND GOVERNMENT PROCESSES

ON THE

FEDERAL DEBT RECOVERY ACT

SEPTEMBER 26, 1985

WASHINGTON, D.C.

I am pleased to be here today to discuss the proposed bill under consideration to permit referral of federal debt claims to outside counsel for legal action. The New York State Higher Education Services Corporation of which I am President, has had extensive experience in employing the services of outside legal counsel to pursue its collection claims on defaulted guaranteed student loans. In our case it was a matter of need, not of choice. I can say at this juncture we believe we have developed the relationship with outside counsel to a point that fully satisfactory arrangements, including fees charged, requirements to be adhered to, as well as results, are achieved. In my view, if, as appears, there is a reasonable need to seek the services of outside counsel to handle federal agency debt claims, authorizing same by this legislation is entirely appropriate, particularly if necessary safeguards -- some of which are already addressed in the proposal -- are prescribed, either by statutory mandate or contract.

The New York State Higher Education Services Corporation is an agency created by the state of New York to administer New York's higher education grant and scholarship programs and the federal guaranteed student loan program. It is from the perspective of this latter program that I speak today. Our agency is one of the oldest participating in the guaranteed student loan program, actually initiated by our predecessor in interest, the New York Higher Education Assistance Corporation. We are the largest state agency in the federal guaranteed student loan program, guaranteeing approximately a billion dollars of student loans a year. As a guarantee agency, when the student defaults in repayment of his or her loan, we are required to purchase the loan from the lender. I might add, we do not do this before we undertake a rigorous aversion process to assure all efforts have been made to avoid the default and reinstate the loan. It is our policy to do everything possible to prevent defaults. However, there is a certain percentage of cases where default is unavoidable. As to those, we pursue collection through an extensive in-house collection program. A significant portion of the loans in default are brought into repayment by the steps taken in our collection unit. Again, though, for some debtors even these efforts are not enough. Aside from the debtors who cannot be located, or clearly are not then in a position to repay, there are others for whom it is simply a matter that they must be forced to pay. Obviously, dealing with the latter calls for legal action.

In my opening statement I referred to this bill being appropriate if the need is present. I perhaps should add in this connection before proceeding further, that such need should not be created. The collection activities undertaken by the New York State Higher Education Services Corporation I have referred to, and will be discussing in the remainder of my remarks, is undertaken to collect what in the last analysis is an indebtedness to the federal government. The availability of the services of outside counsel that would be provided by this bill should not be

used as a reason to require reassignment of accounts from the state agencies, such as ours, which have long-standing, well developed and effective collection programs. Provision should be made in some manner to assure that this does not occur.

Let me review our history with respect to this phase of our activities. Our predecessor in interest employed outside counsel to effect collection of debts. That was more than ten years ago. We continued that process when our Corporation took over. The attorneys hired were local firms engaged through a negotiated, non-bid, process. Collections are still coming in from debtors through the repayment plans effected or judgments entered by these attorneys. Unfortunately, the fees agreed to turned out to be too high, up to 50% higher than what we achieved not many years later when we went to a bidding system to obtain such legal services.

As a State agency, we ultimately took advantage of the facilities of our own Attorney General's Office. However, and perhaps this is pertinent to the need for this bill, after this was in effect for a period of time, it was mutually decided because of the size of our collection workload and the limited facilities the Attorney General could make available for this type of work -- in view of his other extensive obligations -- it was appropriate that our agency again seek outside legal services to enforce our collection claims.

In moving from the Attorney General's Office, we decided that as part of the outside services we would require initially a vigorous second collection effort before legal action would be commenced. This was available and we felt it would eliminate unnecessary expenditure for instituting legal proceedings, at least in some degree. This time an extensive bidding process was had. As an outgrowth of that, contracts were awarded to four firms, three collection agencies and one a law firm which specialized in collection law work. The latter was required to first pursue similar type collection efforts as the collection agencies and for the same period of time. If the debtor did not enter into a satisfactory repayment plan by a certain date unless it was determined the claim was uncollectible and returned, suit was required to be commenced; by the collection law firm on its accounts, or by approved attorneys recommended by the collection agencies in the case of their accounts.

The three year contracts with those firms have concluded and we are now in the process of employing new outside collection agencies and collection law firms. Generally, we have considered the overall operation we established and the results we obtained from this outside referral system to be satisfactory given the type of accounts and debtors involved. Out of the 87,700 accounts referred over the three years we were under contract, some 29,700 judgments were entered and judgments continue to be entered to date even though the contract terms have expired. In terms of dollars, collections have totaled almost $27 million. Collections

from the judgments obtained by the earlier outside counsel employed, also, of course, continue to bring in substantial amounts each year.

One important factor that has to be considered in employing the attorneys is their ability to handle a large volume of accounts. As I have already pointed out, over a period of three years we forwarded over 87,700 accounts to firms under our recent contract. For the larger firms, this entailed accepting and handling over 9,000 new accounts each year of the term of the contract.

We have determined -- and this may be stating the obvious -- that in assigning cases, keeping tabs on and paying the attorneys, it is best, to the extent possible, to limit the number of attorneys with whom arrangements are made. In this connection, we wonder if the proposal might not have the effect of requiring a larger field of private attorneys handling the collection work for the agencies than is needed. Our experience has been that the nature and scope of the legal collection work does not call for a large number of attorneys. And this appears so even if a much greater volume of cases is involved than ours. Often payment is obtained on a lawyer's letter or on the service of the summons. Moreover, the great bulk of judgments are obtained on default. When a defendant does put in an answer, we require outside counsel to bring on a motion for summary judgment. Since our claims are based on monies actually loaned, there is rarely any bona fide defense and the motions for summary judgment are granted. Thus, even where answers are filed, judgments are obtained without the need for court appearances on the part of this agency. If, it is anticipated the same situation will obtain in the federal debt collection cases, it would seem consideration might be given to following a different method of selecting attorneys and to arriving at a lesser number than the proposal now appears to require.

Our expectation in cases assigned to outside counsel is not that they will have to try complex cases, but to locate the debtors, deal with them and, if necessary, through the obtaining and enforcement of judgments, collect the claim usually through monthly payments made over a period of years. This requires certain techniques and experience which again tends to point to the selection of those attorneys who are specially geared to this type of work.

As indicated, our experience with attorneys of this type has been satisfactory. However, there are certainly areas of concern and we have provided in our contracts specific controls governing certain activities and imposing other requirements. The bill addresses some of these; for example, compliance with the debt collection laws. Parenthetically, of course, we could not make the firms subject thereto, only to require they follow the standards established by these statutes or else they are subject to discharge. We find this both a necessary and appropriate

requirement. The question that does arise is whether it is necessary to go so far as to make the attorney actually subject to the law, as this bill would do or rather to leave it to the contractual area.

Among other important requirements and conditions we have included in our contracts, are time constraints. We require the suits to be instituted within a certain period of time after direct collection efforts prove unsuccessful. We require status reports and if the action has not been commenced within the prescribed time or has not been prosecuted appropriately, we can pull the account back. If this occurs too often, we can terminate the contract -- a very potent tool. We have now sought to provide in our new contracts that where judgments are entered, if we find enforcement is not properly prosecuted, we can require the return of the account -- and the attorney to release any attorney's lien. This permits us to transfer the account to another attorney to take appropriate enforcement action. I would note here that while payments on judgments have a way of suddenly occurring after the judgment has lain dormant for years, we feel vigorous enforcement is called for, that it can effect collection earlier.

Other circumstances that have to be provided for in the arrangements made with the attorneys is the method of handling the payments received, to assure they are properly accounted for and there is no delay in the transmission of these payments. We provide for access by our auditors to the attorneys' books and records pertaining to referred claims. We make specific provision as to the type of settlements that can be entered into with the debtors and what happens in the case of bankruptcy or if any appeal is necessary. In this latter regard, we require that the attorney handle the appeal at its own cost and expense where the matter at issue is procedural. We provide for the substitution of our Counsel or the Attorney General in any action where a significant issue arises. Where issues are raised in the pleadings or by motion, the attorney must advise us as to this before any response is made. Also, we require that the attorney hold us harmless on any claims brought against us based upon the actions of said attorney or its employees. Provision is also made in the contract for the attorney to have appropriate insurance. I could detail further areas in which controls and procedures are established by the contract entered into, but I think the point is made. We have an elaborate system by which we assure that we get the services sought in the manner in which we believe it should be provided.

I would add, parenthetically, we have a limited in-house legal action program handled by our Counsel's office. This is intended to cover a small portion of the collection workload, certain specialized situations, and to act as a test to see just how far we might be able to take on such activity, using current technology and possible additional staffing. If a major in-house litigation program is possible and appropriate, it is intended to

be introduced at a time beyond the expiration of our pending, new three-year contracts.

This leads to my final point today and that is the use of a bidding process to obtain such legal services.

Our experience has been that we can obtain the services of attorneys specializing in student loan collections who have the necessary computer and enforcement capabilities, through the bidding process. In that process we have the opportunity to require the demonstration of and to rate these various necessary capabilities. We have already noted the competitive nature of this field. Bidding on student loan collections assures us that we will receive the most reasonable prices charged possible. This would also be pertinent here, if, as I assume, the volume of federal debt collection that will be available for referral will be quite large. We have seen how private negotiation of contracts with counsel can result in paying higher fees. We therefore would strongly recommend that the proposed bill require bidding.

To recapitulate, it has been our experience that the employment of a limited number of attorney firms which specialize in collection matters, together with effective controls can provide satisfactory collection results and at a reasonable cost. As I have underscored by my last point, significant to this has been the requirement for bidding by the attorneys for the awards of these contracts. I believe the employment of outside counsel as authorized by this proposal where needed in specialized situations and if accomplished with similar type controls and procedures as I have outlined above, can be equally effective in the collection of the indebtednesses owing to the federal government. I would reiterate with respect to the need for this bill, it should be made clear that it is not intended to result in any federal agency taking steps to require assignment of claims which may be federally related, from a state agency, such as the one I represent, where, as in our case, collection of these claims is being properly pursued.

I trust this discussion of the New York State Higher Education Services Corporation's experience with the use of outside counsel and the views expressed will be helpful in the consideration of this proposal. I will be glad to answer any questions or if you require, to provide you with additional information.

Senator COCHRAN. We now have a panel of witnesses which includes the private sector attorneys.

We have with us today, Mr. William L. Guice III of Rushing & Guice in Biloxi, MS; Joel Nussbaum, who is with Hayt, Hayt & Landau in New York; Frank Koger, past president of the Commercial Law League in Kansas City, either Missouri or Kansas.

Mr. KOGER. Missouri.

Senator COCHRAN. Missouri.

Welcome. We appreciate your being here.

Billy, I will ask you to lead off, if you will. We hope you all will leave us some room for discussion after your presentations.

**STATEMENT OF WILLIAM L. GUICE III, OF RUSHING & GUICE; JOEL NUSSBAUM, OF HAYT, HAYT & LANDAU; AND FRANK W. KOGER, PAST PRESIDENT, COMMERCIAL LAW LEAGUE**

Mr. GUICE. Thank you, Senator. I will not repeat the prepared statement. I am a partner in a small law firm in Biloxi, MS. There are six lawyers in the firm, and I identify that.

I ask the question, "Why am I here?" I believe perhaps I am here to speak for those attorneys who are engaged in the commercial practice who are not within the large cities and not within the large jurisdictions, but still capable of doing this work for the Government.

In preparing this, I called the local U.S. attorney to see how they were handling the collection of their debts. George Phillips, our attorney was most helpful, but perhaps the most helpful thing was talking to one of his deputies, who said, "What we really do with the handling of the debts is we don't. We have one girl who is overworked, because I have to make a choice between doing a $1,500 collection item or a $15 million defense of a Federal tort claim."

In the southern division in the southern district of Mississippi, there are essentially three deputy U.S. attorneys. They don't have time to do this. They don't have time to check the titles to find out where the property is that these debtors have after the judgments are rendered.

Which brings us to another question: I had the opportunity to lecture on debt collection to attorneys throughout the State, and I think this would be reflective of the other small States. Only those attorneys who do this with some regularity are familiar with the process.

Many people can get a judgment; not many can collect it afterward. It only starts when the judgment is obtained. That is when the work starts; that is where the paralegals and the computers are necessary.

I have found that most small firms in States similarly situated as ourselves have the equipment we have; have the trained paralegals we have; have the computers we have, all of which are assisting the attorneys to do a greater volume of work.

We can collect profitably $600 claims, and we do so. Our firm has had experience in the student loans being referred from universities and from certain of the States. We find they fit in and mesh regularly with our other commercial collections, and our retail collections.

We have had experience in the past representing the Department of Housing and Urban Development during the 235 project when we had the massive foreclosures. There is a benefit there to be gained, we believe. In thoses foreclosures, which we were doing 20 and 30 at a time on these projects, was a very short-lived occupation.

Once it was completed, there was no bureaucracy left to control this. We backed out of the picture. No more talks to the Government; it was done quickly, efficiently, and without a remaining bureaucracy to support in the future: no more secretaries, no more paralegals, nothing but a final check to our firm.

We believe that we can do this on a contingent basis. We would do it, we would hope, with the same contingent fees that we would do similar collection items.

In my discussion with a U.S. attorney's office, I was reminded of one thing, and perhaps we should remind this committee. Many of the notes we are talking about, many of the obligations to the Government carry provisions for attorneys fees in themselves. We are not saying that everything is 100 percent collectible, but on a number of the items, the debtor will actually be bearing the cost of the collection and not the Government.

So it is not unusual to get a judgment for far in excess of the amount claimed, the standard fee being 25 percent in such matters. So your judgment would be 125 percent of the debt, and that would be the collection item on which you work.

We support the act. We believe that we and the smaller firms can do this effectively, efficiently, and we can lower the cost to the Government in doing it.

That concludes our testimony. Thank you.

Senator COCHRAN. Thank you very much, Mr. Guice. I appreciate your testimony.

Mr. Nussbaum.

Mr. NUSSBAUM. Mr. Chairman, Senator D'Amato, members of the subcommittee, it is with pleasure that I appear before this honorable committee to provide testimony on Senate bill S. 209, introduced in January of this year by Senator D'Amato.

I have been a practicing attorney in the State of New York for 19 years. The bill would authorize the Attorney General of the United States to retain private sector counsel to provide legal service through and including postjudgment activity to recover on delinquent nontaxed debts owed to the Federal Government.

The capacity to bring on cases in a timely manner, proceed to judgment, and then move reduce those judgments to payment is the key to an effective debt recovery program. This observation is well recognized and accepted by the credit-granting community, State and local governments, and the Department of Justice.

The most striking factor which sets collection of debts owed to the Government apart from collection in the private sector is the unwillingness of the debtor to repay the Government. While in the private sector, those who borrow realize that they have a legal obligation to make repayment. It would appear that many Americans view Government loan programs as an entitlement rather than as an obligation which must be repaid.

It is apparent that the attitude of many debtors is that the obligations do not have to be repaid or, more significantly, that the Government will not or cannot pursue repayment.

What is more, the integrity of the Federal Government's debt recovery program has, indeed, been undermined by its inability to swiftly employ to conclusion the judicial process which promises to be available if this legislation is passed into law.

Perhaps it was best said by Deputy Assistant Attorney General Robert N. Ford, appearing before a House judiciary subcommittee in July 1982 during testimony on the Government's debt recovery program, "litigation and enforcement of judgments are the ultimate collection weapons. The credibility of the entire collection effort is enhanced by the knowledge that effective litigation and postjudgment remedies will be pursued."

To delay further the implementation of this most indispensable collection tool by the Government's debt recovery program only compounds the problem by increasing the total amount of debt which can never be recovered while adding to an already swollen Federal deficit which this administration, this country and this Congress is committed to reduce.

Based upon our experience in dealing with governmental debt collection programs, it is our opinion that where a debt collection effort is supported by immediate and effective legal collection efforts, results can increase manyfold.

However startling this statement may appear, it is true and an acceptable fact in the collection industry that collection efforts, without legal action, will produce far fewer dollars.

Legal processing is not merely the issuance of a summons and complaint. Legal carries with it the rendering of a judgment and then postjudgment collection activity. Our experience has shown that payment from the recalcitrant debtor will only be achieved through postjudgment remedy and enforcement. It is at this stage of the legal proceeding that the recovery will be maximized.

In July 1981, the Department of Education contracted for the collection of hundreds of millions of dollars of delinquent student loans. This contract specifically prohibited the threat of or commencement of legal action by the outside contractor. During the 4 years that the nonlegal collection contract has been in place, I am advised that the aggregate liquidation rate has been approximately 6.6 percent.

Testimony elicited today indicates that had a viable legal program been implemented in connection with standard collection efforts, the results would have been much higher. Like its predecessor, S. 209 represents the most cost-effective way to ensure successful Federal debt collection results. The Department of Justice will retain those law firms possessing ability and expertise in handling large numbers of debt collection cases.

The retainer agreement will provide for payment to be made out of the actual collection dollars which a law firm is able to secure. Thus, the proposed legislation promises a significant cost savings to the Government vis-a-vis a program that might contemplate additional employment on the Federal level to attempt to collect delinquent debts.

Mr. Chairman, thank you for the opportunity to appear here today to suggest that, in addition to other recently announced efforts which will be employed by the Federal Government to collect delinquent accounts receivable, that the Senate swiftly pass S. 209. This will bolster those other efforts, assuring complete utilization of every proper collection device presently available and in use by the private sector.

I would be pleased to respond to any questions that your committee may have. Thank you.

Senator COCHRAN. Thank you very much, Mr. Nussbaum.

Mr. Koger, you may proceed.

Mr. KOGER. Mr. Chairman and Senator D'Amato, I certainly thank you for the ability to appear here today. I am Frank Koger. I am a partner in the law firm of Shockley, Reid & Koger in Kansas City, MO. I practiced there 28 years as a collection lawyer. Our office does commercial collection, bankruptcy, retail collections.

We represent banks; we represent the State of Kansas; we represent the city of Kansas City in tax collection matters.

I am testifying today, however, as the past president of the Commercial Law League of America. The league has approximately 5,500 members throughout the United States, 85 percent of whom are lawyers who are engaged in some aspect of commercial practice. The remainder include members of commercial collection agencies and law lists, as well as judges and professors. Both as a practicing attorney and as past president of the league, I commend Senator D'Amato for introducing Senate bill 209 and Senators Roth and Cochran for introducing Senate bill 1658.

Too many people in the United States for far too long have regarded money obtained from the U.S. Government as gifts rather than obligations which have to be repaid.

Not only is the money involved important, but it creates a public perception of governmental largess to unworthy recipients and erodes the faith of the people in the governmental system of creating loans, grants, and other extensions of credit to people who are in need and who should have them for educational purposes; for disaster purposes; for business purposes.

The Commercial Law League of America strongly supports the adoption of the Debt Collection Act of 1982, and we strongly support the amendments of that act as contained in the present Senate bills which are being heard now. We are aware of the efforts of the Justice Department, but we are also aware of what Attorney General J. Paul McGrath testified to in May 1983 when he said, "Short of enormously increasing the size of the U.S. attorney's offices, the only viable solution is to retain private firms to handle the overflow of this massive influx of cases."

We strongly support that statement. The Commercial Law League is an organization which has been in existence for some 90 years. Some of us in the league call it "the Trinity," because there are three parts to them: The practicing attorneys who receive claims and who collect them; the forwarding agencies, commercial collection agencies which process claims from the creditor itself and who select the counsel who handle these matters because of their expertise and their handling in the past of other collection

matters; and then the 11 recognized law lists which list attorneys who have expertise in the field.

In addition to listing those attorneys, the law list bond those attorneys, and so they are very careful in the selection of attorneys who are on their list.

Because of the 90 years of experience that the Commercial Law League has had, we have set up certain guidelines, certain rules and regulations that govern our internal operations. We have been pleased to attach copies of these to our written reports, and we hope they may be helpful to the Government in handling the problems of forwarding.

We strongly support a situation where the Government would contract with an agency; the agency would operate the account until a stated period of time; the agency would then forward to the attorneys where litigation was necessary.

Believe it or not, gentlemen, I know that the Justice Department thinks anybody can collect bills, anybody can go to small claims court, but I think perhaps the greatest tribute or the testimony to the expertise required is the fact at the present time, our law office in Kansas City, MO, does all of the collection work for 13 law firms in Kansas City, MO, who don't even attempt to collect their own fees.

Thank you for allowing me to testify.

Senator COCHRAN. Thank you, Mr. Koger, I think this panel has helped us understand greatly the practical impact of such authority in the law and how it can be used to increase the likelihood of debt collection by the Government of debts and bills that are owing and are not paid.

As I understand from your experiences in the collection of accounts, using the authorities that you have as a lawyer to litigate, try a suite, reduce a claim to judgment and collect on that judgment, that the efforts to collect are greatly enhanced when there is this power, coupled with the collection effort. In other words, standing behind there is a threat that can be used.

I wondered what you thought about the testimony of the representatives of the State agencies and attorney general's office with respect to attorney selection. As I understand this legislation, it will give the Attorney General, the Department of Justice, the authority to make selection.

Is there any criteria that we should write into the bill or special procedures that should be followed in that connection such as competitive bidding; contracts that require audits or at least give the authority for audits? I will ask each of you to give me your reaction to that and to the comments that you heard.

Billy.

Mr. GUICE. I think there should be some criteria, at least some degree of experience criteria in order, in showing that you are conducting this work at a given time, that you are actually in the commercial practice when you make the application.

I am never in favor of competitive bidding, because it generally leads to getting a bid down to a level wherein you cannot make a profit. I believe the fee should be set at the commercial level that has already been determined in the marketplace, and I assure you,

it has continuous downward pressure by the various clients you are representing on a day-to-day basis.

That is generally a level which allows us to make a reasonable profit and not to be too high to the client. It is within those traditional levels that the Senator is aware of.

Audits is something we are familiar with. Any firm that does any amount of title insurance work these days has an audited account. The way that is accomplished, generally, is to keep those funds segregated through a separate account so that the auditors can deal with that account and that account only. There would be a problem in going beyond that into privileged accounts, for example, your normal trust account or you normal operating account.

But it is very easy to do. It would take a little work with your computer program and the mere opening of one or two bank accounts. From that standpoint, we find no difficulty.

Senator COCHRAN. Thank you very much.

Mr. Nussbaum.

Mr. NUSSBAUM. I think it was very well stated by Dr. Cross in her statement where she indicated that the competitive bid itself and the lowest fee is not necessarily the best result, but that her department has sought to give not a competitive bid but a competitive reward to that entity, law firm, agency that produces the best.

To answer the first part of your question, I believe the firm or organization that has the capacity, professional capacity, computer capacity is essential. The numbers that we are dealing with are staggering. I don't believe it is the intent of the Government to retain hundreds of thousands of law firms. There will be more than one firm in each judicial district, this will be a controllable number. When that is divided into the case load, the referral number will be staggering.

Therefore, capacity, expertise, and the experience and computer support are essential. This, coupled with the post competitive aspect of reward on future placements, is a proper procedure.

Senator COCHRAN. Thank you very much.

Mr. Koger.

Mr. KOGER. I think we are all going to be together on this one. I think the first thing is the experience, the expertise, the past proven ability to collect money. I think there would be something in your legislation to that. I totally agree that the contract should provide for audit or the possibility of audit; and a third thing which I hadn't heard mentioned yet but which I consider absolutely essential in this business is it should provide for a segregated trust account with the power of the contracting agency to go in at any time and have a look at that account directly through the bank itself.

Those are the things that I think should definitely be in the legislation. I totally agree with Billy and with Mr. Nussbaum that when you go strictly on price, you get what you pay for.

Senator COCHRAN. Thanks very much.

Senator D'Amato.

Senator D'AMATO. Mr. Chairman, I just think it is unfortunate that Mr. Ford and his entourage are not here. Maybe they are out there pursuing bad debts.

I would like any of you to respond to the possible pilot project of farming out cases valued at $600 and under from HUD to paralegals for legal action in small claims courts. What do you think about that?

Mr. GUICE. Let me respond to that. I gave a lecture in Jackson, MS Tuesday, and one of the things I recommended——

Senator D'AMATO. I wanted the attorney general's office to be here so you could lecture them, but go ahead.

Mr. GUICE. This was to a group of credit managers, about 100 of them. One of the things I recommended to them was to stay out of small claims court. What happens in many jurisdictions is you get your judgment, but then it is lost in the shuffle never to be found again. There is no follow-up.

I question what action is to be taken afterwards to collect a judgment, because many jurisdictions must then go to a superior court of some nature, and a lawyer must appear in order to represent that client.

Second, you have lost something in the process. You have a person coming cold from Washington, DC, to collect a debt against an individual debtor as opposed to sending it to a local person who, if that person is a debtor to the Government, is probably a debtor to someone else in town and already has a history about him. He probably has already been sued by that attorney. Perhaps, when he gets that first letter from the attorney, he knows what the ball game is about.

So it wouldn't be necessary to take that step into small claims court. I think, if I may be so bold, I agree with your summary of ridiculous for the action of the pilot program.

Mr. KOGER. I would like to respond, also, if I might, Senator. We have one rule in our office: If the claim has already been to small claims court by the claimant and been screwed up there, we won't take it.

Senator D'AMATO. Thank you, Mr. Chairman.

Senator COCHRAN. Thank you for coming to the hearing and helping us in the way that you have. We appreciate your cooperation with the committee.

[The prepared statements of Messrs. Guice, Nussbaum, and Koger follow:]

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To: The United States Senate Committee on Governmental Affairs Subcommittee on Nuclear Proliferation, and Government Processes

PREPARED STATEMENT OF WILLIAM LEE GUICE, III

The law firm of Rushing & Guice was formed shortly after the turn of the century. Although a general practice firm throughout its history, Rushing & Guice has been engaged in commercial litigation which involves, among other things, the collection of commercial and retail debts. There are presently six members of the firm, all of whom devote some portion of their time to the commercial practice and some of whom, such as myself, devote a majority of their practice to business and commercial litigation.

The members of Rushing & Guice are active in organizations relating to the commercial practice, including, but not limited to, The Commercial Law League of America, The United States Bankruptcy Conference, and Section of Corporation, Banking and Business Law of the American Bar Association. William Lee Guice, III is presently the Second Vice-President of the Southern Region of the Commercial Law League of America, which position would normally ascend to Chairman of the Region. The Southern Region

of the Commerical Law League of America includes the traditional Southern States, Texas and Oklahoma and accounts for a large percentage of those individuals engaged in the commercial practice within that area. The majority of the income of Rushing & Guice is derived from some form of the commercial practice. The members of the firm of Rushing & Guice and particularly the undersigned have lectured extensively in the area of commercial litigation and bankruptcy law, including courses designed for attorney consumption such as "Mississippi Collection Law" and courses designed for attendance by credit managers such as "Collection Techniques."

In principal, the undersigned supports the adoption of S.209, The Debt Recovery Act. The undersigned believes it would be in the best interest of the United States and the public as a whole to retain private sector counsel to provide legal services and to conduct litigation to recover delinquent debts owed to the federal government. S.209 would benefit the private sector to the extent that a reasonable fee could be derived from handling such work but should in the long run produce a higher recovery rate on debts owed the federal government and free the

overburdened United States Attorney's Office to handle the many pending matters of greater magnitude.

In order to be effective in commercial litigation and collection efforts, it is necessary that one employ specially trained paralegals and take advantage of extensive computerization and word processing to handle small matters at a profit. Most government agencies not only do not have these uniquely trained individuals but do not possess the equipment and software programs to accomplish this job. More importantly, the commercial practitioner has the experience of dealing with a variety of debtors and experiencing the various problems which result in the collection effort, problems which range from the recalcitrant debtor secreting property to the individual with a genuine inability to pay whose circumstance could simply be cured by adopting a reasonable payment schedule. The commercial practitioner handling government claims would be more familiar with post-judgment remedies and process and, therefore, could turn paper judgments into collected funds. In my experience in lecturing on the subject of debt collection by attorneys, it is apparent that post-judgment remedies are not matters which the

average practitioner, including the United States Attorney's Office employ on a regular basis.

The use of private sector attorneys from the home district of the debtor will place the handling of the collection item in the hands of a person more likely to be familiar with the condition of the debtor. It is clear that litigation is the tool which must be employed to collect a debt from the recalcitrant debtor. Ultimately, litigation causes the debt to be paid; it is the knowledge that through litigation a judgment would be entered and the powers of the court will be exercised to turn that judgment into money. Litigation is at the heart of the collection process and provides an orderly method by which the contracts which gave rise to the debt may be enforced.

As most collection work is performed on a contingent fee basis, the federal government would only be compensating private sector attorneys when a debt has been collected as said compensation would relate to the amount collected by the attorney. Thus if the normal practice is followed, recovery would come from the delinquent debt itself and no compensation would be paid where a favorable result had not been obtained.

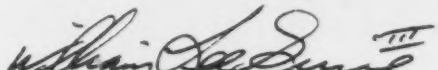
Moreover, many times the debt instrument, a note or security agreement, would require the payment of attorney's fees in which case one may possiblely collect the entire debt along with the compensation for the attorney at no expense to the federal government.

The employment of private sector attorneys would not cause the creation of a bureaucracy but allow the federal government flexibility in these matters. Since the private sector law firm would be working on an assigned case by case basis, neither that firm nor his support staff would be on the government payroll when there did not exist a backlog of delinquent debts. The law firm of Rushing & Guice had the opportunity to represent the Department of Housing and Urban Development in the numerous foreclosures in the Southern District of Mississippi which resulted from the 235 Housing Program. The necessary foreclosures were accomplished most expeditiously at a reasonable fee to the government, and when the necessary legal action was completed, the relationship was simply terminated. It was not necessary for the government to hire any additional employees and it could immediately call upon the established expertise of a

practitioner in the area during the duration of the emergency. A similar result would be obtained from the hiring of the private sector commercial practitioner.

I, therefore, support S.209, The Federal Debt Recovery Act and submit the use of private sector attorneys would benefit all parties involved with perhaps the exception of those individuals who are deliquent in their debts owed to the federal government.

Respectfully submitted,



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STATEMENT

OF

JOEL N. NUSSBAUM
PARTNER

OF

HAYT, HAYT & LANDAU

BEFORE

THE

UNITED STATES SENATE
COMMITTEE ON GOVERNMENTAL AFFAIRS
SUBCOMMITTEE ON ENERGY, NUCLEAR
PROLIFERATION, AND GOVERNMENT PROCESSES

ON S.209

2:00 P.M.
DIRKSEN SENATE OFFICE BUILDING
SEPTEMBER 26, 1985

HAYT, HAYT & LANDAU

Mr. Chairman, Senator D'Amato, and Members of the Subcommittee: It is with pleasure that I appear before this honorable subcommittee on behalf of, and as a partner with, the law firm of Hayt, Hayt & Landau to provide testimony on Senate Bill S.209, introduced in January of this year by Senator D'Amato. I have been a practicing attorney in the State of New York for nineteen years. The bill would authorize the Attorney General of the United States to retain private sector counsel to provide legal service through and including post-judgment activity to recover on delinquent, non-tax debts owed to the Federal Government.

The capacity to bring on cases in a timely manner, proceed to judgment, and then move to reduce those judgments to payment is the key to an effective debt recovery program. This observation is well recognized and accepted by the credit-granting community, state and local governments, and the Department of Justice. J. Paul McGrath, Assistant Attorney General of the United States, Civil Division, stated on July 21, 1983 before this very subcommittee on the same issue under consideration today that:

> "if given the authority, the Justice Department would move promptly to retain private counsel in those judicial districts where it is clear that the U.S. Attorney's Offices do not have the capacity to bring cases in a timely manner. Because the Statute of Limitation is running on all student loans, it is important that administrative delays be eliminated."

The most striking factor which sets collection of debts owed to the Government apart from collection in the private sector is the unwillingness of the debtor to repay the Government. While in the private sector those who borrow realize that they have a legal obligation to make repayment, it would appear that many Americans view Government loan programs as an entitlement rather than as an obligation which must be repaid. It is apparent that the attitude of many debtors is that the obligations do not have to be repaid, or more significantly, that the Government will not or cannot pursue repayment.

What is more, the integrity of the Federal Government's Debt Recovery Program has indeed been undermined by its inability to swiftly employ to conclusion the judicial process which promises to be available if this legislation is passed into law.

Perhaps it was best said by Deputy Assistant Attorney General Robert N. Ford appearing before a House Judiciary Subcommittee on July 15, 1982 during testimony on the Government's Debt Recovery Program:

> "Litigation and enforcement of judgments are the ultimate collection weapons. The credibility of the entire collection effort is enhanced by the knowledge that effective litigation and post-judgment remedies will be pursued."

Now, more than at any other time in the nation's history, the need to recover delinquent debts could not be more apparent or crucial. According to figures recently released, the United States loses $14,700,000 each day that the Covernment is unable to recover delinquent debts. The running of the Statute of Limitations is partially responsible for this astronomical figure and represents some $8,700,000 of lost daily revenue.

Even if this legislation was passed today and all of the law firms in the country that are involved in collection were retained to proceed immediately to recover these delinquencies, it would take years before any major impact was realized. But, to delay further the implementation of this most indispensable collection tool by the Government's debt recovery program only compounds the problem by increasing the total amount of debt which can never be recovered, while adding to an already swollen federal deficit which this administration, this country, and this Congress is committed to reduce.

Based upon our experience in dealing with governmental debt collection programs, it is our opinion that where a debt collection effort is supported by immediate and effective legal collection efforts, results can increase manyfold. However startling this statement may appear, it is true and an accepted fact in the collection industry that a collection effort without legal action will produce far fewer dollars.

Legal processing is not merely the issuance of a

summons and complaint. "Legal" carries with it the rendering of judgment and then post-judgment collection activity. Our experience has shown that payment from the recalcitrant debtor will only be achieved through post-judgment remedy and enforcement. It is at this stage of the legal proceeding that recovery will be maximized.

In July of 1981, the Department of Education contracted for the collection of hundreds of millions of dollars of delinquent student loans. This contract specifically prohibited the threat of or commencement of legal action by outside contractors. During the four years that the "non-legal" collection contract has been in place, I am advised that the aggregate liquidation rate has been 6.6 percent.

Testimony elicited today indicates that had a viable legal program been implemented in connection with standard collection efforts, the results would have been much higher.

Like its predecessor, S.209 represents the most cost-effective way to ensure successful federal debt collection results. The Department of Justice will retain those law firms possessing ability and expertise in handling large numbers of debt collection cases. The retainer agreement will provide for payment to be made out of the actual collection dollars which the law firm is able to secure. Thus, the proposed legislation promises a significant cost savings to the Government vis-a-vis a program that might

contemplate additional employment on the federal level to attempt to recover delinquent debts.

Mr. Chairman, on behalf of myself and of the law firm of Hayt, Hayt & Landau, I thank you for the opportunity to appear here today to suggest that in addition to other recently announced efforts which will be employed by the Federal Government to collect delinquent accounts receivable, the Senate swiftly pass S.209. This will bolster those other efforts, assuring complete utilization of every proper collection device presently available and in use by the private sector.

I would be pleased to respond to any questions you or other members of the subcommittee may have.

Statement of Frank W. Koger, Past President
Commercial Law League of America
Before the
Subcommittee on Energy, Nuclear Proliferation and Governmental Processes
of the
Senate Committee on Governmental Affairs
September 26, 1985

Re: S. 209 and S.1658 to authorize contracts retaining private counsel to furnish collection services in the case of indebtedness owed the United States

I am Frank W. Koger, a partner in the law firm of Shockley, Reid & Koger in Kansas City, Missouri, where I have been engaged for 28 years in the practice of commercial law, particularly in the field of debt collection.

I am testifying today as a Past President of the Commercial Law League of America. The League has about 5,500 members throughout the United States, of whom about 85% are attorneys engaged in the practice of commercial law. The remainder includes representatives of commercial collection agencies and law lists, as well as judges and professors.

Both as a practicing commercial attorney and as a representative of the Commercial Law League, I commend Senator D'Amato for introducing S. 209 and Senators Roth and Cochran for introducing S. 1658 and scheduling these hearings to move one of the bills toward adoption. Too many for too long have regarded their obligations to the United States government as gifts rather than loans which require repayment. Beside the money involved, this creates a public perception of governmental largesse to unworthy recipients, which erodes public support for needed business and educational loans. Belief that the government will act in an efficient and businesslike manner to enforce its accounts receivable will help restore public confidence and acceptance of governmental lending practices.

The Commercial Law League strongly supported adoption of the Debt Collection Act of 1982 as a necessary step to increase the efficiency of efforts to collect debts owed to the United States, and particularly urged the inclusion of section 13 to authorize a governmental agency to contract with any person or organization for collection services - to utilize the experience and expertise of those engaged in debt collection in the private sector.

The League previously recommended that a further step to improve the effectiveness of federal debt collection, again following the procedures in the private sector, would be to authorize federal agencies to utilize private attorneys to litigate federal claims. We supported the adoption of S. 1668 at hearings by this Subcommittee in 1983 and we support the adoption of S.209 or S.1658.

We are aware of the efforts of the Department of Justice to expand and make more efficient the work of the U.S. Attorneys in litigating claims owed the United States; and we noted the testimony of Assistant Attorney General J. Paul McGrath at hearings before a subcommittee of the Senate Committee on Governmental Affairs on May 25, 1983 when he concluded:

> "Short of enormously increasing the size of the U.S. Attorneys' offices, the only viable solution is to retain private firms to handle the overflow of this massive influx of cases. However, our review of the law in this area suggests that the Attorney General or the head of any department may not have the authority to pursue such a course. Further, under current law, we are expressly precluded from contracting on a contingent fee basis. Therefore, Mr. Chairman, if we are to follow through on the impressive start we have made in debt collection, we need legislative authority to retain private counsel for the limited purpose of collecting debts."

(1) Summary of S. 209 and S. 1658

S. 209 and S. 1658 would authorize:

(1) The Attorney General to make contracts retaining private counsel (i) under S.209 to furnish legal services, (ii) under S. 1658 to furnish collection services, altho the section-by section analysis of S.1658 says that it authorizes the Attorney General to contract with private counsel "to litigate debt collection cases".

(2) The head of an executive or legislative agency to refer to a private counsel retained under paragraph 1 claims of indebtedness owed the United States arising out of activities of that agency.

Any such contract with private counsel would be required to include provisions (A) permitting the Attorney General to terminate the contract or to have any claim returned if he finds such action to be in the public interest; (B) permitting under S.209 the head of any agency referring the claim, or under S.1658 the Attorney General to resolve a dispute, compromise the claim or terminate collection action on the claim; and (C) requiring private counsel to transmit monthly to the Attorney General and the head of the agency referring the claim under the contract a report on the services rendered and the progress made in collecting a claim under the contract.

(2) Procedure in the Private Sector

While some very large claims are placed by creditors directly with law firms for litigation, the general procedure is for a creditor who has been unable to collect a delinquent debt to:

(a) Place claims with a collection agency; and

(b) Authorize the collection agency, as its agent, to forward the claim to an attorney selected by the agency unless the creditor chooses an attorney, with contingent fee compensation agreed to by the creditor and authority for only the creditor to authorize, compromise or terminate litigation.

Collection agencies, by their regular experience in forwarding claims to attorneys in all parts of the country, acquire knowledge of the firms in various parts of the country which are competent, experienced and reliable in handling collection litigation, including enforcement of judgments. Where a collection agency needs a local attorney in a new area, it usually relies on one of the eleven recognized law lists which list geographically the law firms which are interested in collection work and which meet the bonding criteria of those lists.

It is because of this effective working relationship between collection agencies, law lists and attorneys that all three of those groups are represented in the membership of the Commercial Law League. The League's 90 years of successful blending of those three elements has served the private commercial sector well. Perhaps some of the lessons taught by that history could serve this project also.

(3) Government Contracts with Private Counsel for Legal Services

In the private sector when a creditor places a claims with a collection agency with authorization to forward the claim to an attorney if necessary, the fact that the claim may be forwarded to an attorney for litigation if necessary is a compelling reason for the debtor to pay the collection agency and avoid the inconvenience and possible expense of litigation.

This would be equally true in the collection of claims owed to agencies of the federal government. If there were authority, as provided in S.209 or S1658, for contracts with private counsel for legal services in collection of debts owed to a federal agency, there would be a compelling reason for debtors to pay the federal agency on initial demand or to pay a collection agency performing collection services under contract with a federal agency. The existence of such authority would minimize the cases in which it is actually used.

Finally, we emphasize that debt collection and enforcement of judgments is a specialty in the law and it requires qualified attorneys in the geographical area where the debtor is located. It is important that criteria be established for selecting and contracting with law firms qualified and experienced in debt collection.

The Commercial Law League believes that the provisions of S.209 or S.1658 would provide an effective additional tool in the collection of some of the billions of dillars in delinquent debts owed to agencies of the federal government, which would help to minimize the deficit in the federal budget. We urge adoption of S. 209 or S. 1658.

We appreciate the opporutnity to present these comments and would welcome the opportunity to provide any additional information to members of the Subcommittee or its staff.

Senator COCHRAN. Our final panel today includes representatives from the collection agencies and businesses in the private sector. It includes Richard Horn, chairman of the Board of Payco American; G.L. Bob Dawson, vice president of marketing of G C Services Corp.; Carleton Fish and William Hearne, American Collectors Association, Inc.; and Emil Hartleb, vice president and general manager of Dun & Bradstreet Government Services.

We welcome each of you and thank you for being here to appear as witnesses in our hearing. We have your prepared statements, and they will all be made a part of the record in full.

We hope you will be able to summarize your presentations to us. We will take the presentation from each of you and then have an opportunity for questions.

Richard Horn, let's start off with you.

**TESTIMONY OF RICHARD HORN, CHAIRMAN OF THE BOARD, PAYCO AMERICAN; G.L. "BOB" DAWSON, VICE PRESIDENT, MARKETING, G C SERVICES CORP.; CARLETON W. FISH AND WILLIAM HEARNE, JR., AMERICAN COLLECTORS ASSOCIATION, INC.; AND EMIL HARTLEB, VICE PRESIDENT AND GENERAL MANAGER, DUN & BRADSTREET GOVERNMENT SERVICES**

Mr. HORN. Thank you, Mr. Chairman and Senator D'Amato, members of the committee. It is a pleasure to be here again to discuss the important issue of debt collection of nontax past due receivables owed to the United States. My name is Richard Horn, chairman of Payco American Corp., one of the largest national collection agencies in the United States.

I have been in the debt collection business for over 30 years. Payco American has been in business for 52 years. Our headquarters is in Brookfield, WI. We have 50 locations in the major metropolitan areas of the United States and employ 2,100 people. Last year, our commercial and consumer clients placed over $1 billion with us for collection.

In addition to our collections for the private sector, we have recovered approximately $50 million for the Department of Education in the past 5 years. We remit daily to the Federal Reserve Bank in San Francisco.

The American public owes the members of this committee a debt of gratitude for their leadership and commitment who give the agencies of Government the tools to recover billions of past due dollars.

Dollars collected are dollars that the taxpayer does not have to pay it. There is no such thing as an unpaid account. People who pay their bills also pay for those who can pay but don't pay.

The past due receivables have another substantial cost to the Federal Government, and this was in my testimony, and Senator D'Amato mentioned it. The chart is there.[1] I think it is worth an underscore. I put it in my report. When you consider the amount outlawed by the statute of limitations, the cost of debt servicing and the loss of interest and the investment of cash that will generate on $20 billion of nontax past due receivables, the additional

[1] The chart referred to and two others follow Mr. Horn's prepared statement.

cost could be easily $5 billion annually. This is another reason why a cost-effective and efficient collection program is important.

We believe the Department of Justice needs the authority to retain private counsel to furnish legal services for debts owed to the United States. To make the program effective, the private collection agency must work with the Federal agency and private counsel.

Great strides have been made, especially in this committee, the Debt Collection Act of 1982, and the amendment to pay for collectors out of the funds they collect. Also, the OMB circular 129, which sets standards for extending credit as well as collecting the accounts receivables.

The circular provides for collection agencies to refer accounts to attorneys. Also, the Federal Fair Debt Practices Act regulates the collection agencies.

One more important consideration is needed so that as to benefit from the collection of the private sector when litigation services are necessary. In the collection agency operation, 80 to 90 percent of the amount collected is accomplished by locating the debtor, requesting payment by letter and phone, and negotiating for the payment in full or a payment arrangement.

In the private sector, if the debtor has the ability to pay but doesn't, the creditor permits the accounts to be referred to an attorney by the private collection agency. The creditor may designate the attorney to be used. The creditor, the private collection agency, and the attorney for litigation is a very effective collecting team. This procedure generates $1 million in collections at Payco American every 10 hours.

The alternative is to implement and finance a very large increase in the U.S. attorney's office to handle the case load and clerical work.

The better way would be to have the attorneys litigage the cases when necessary on a contingent basis. In addition, the costs are in direct relation to results due to the contingent feature. This would free legal talents of the U.S. attorneys who pursue matters of much more importance to the American public. The attorneys have to be paid by Justice to be used for litigative accounts, referred to them by collection agencies servicing the Government. This is the procedure generally followed in the privat sector.

The collector's approach is more confident and effective when he knows there is a litigation process to support him.

There should be an exception, however, unliquidated claims where the amount due is not certain and there are offsets or a reasonable dispute about the validity of debt involved. In this situation, the professional services of the attorney is needed and the Federal agency may want to refer accounts directly to the attorney and consider another fee structure.

In summary, once a decision is made to litigate, the process must move quickly, because the financial status of a debtor is often volatile. The collecting agency can effectively coordinate the clerical details and collection support between the Federal agency and the attorney.

For this legislation to be effective, the services of the collection agency must not be circumvented, because they are in a key position in this team effort.

The intent of this legislation must reflect this.

Thank you, Mr. Chairman, for permitting me the opportunity to offer these comments.

Senator COCHRAN. Thank you, Mr. Horn, for being leadoff witness in this collection agency and business panel.

I now would like to hear from Bob Dawson.

Mr. DAWSON. Good afternoon, Mr. Chairman and Senator D'Amato. Thank you for the opportunity to appear today and to present our views on S. 290. I am Bob Dawson, and I am vice president of marketing for G C Services Corp. G C Services is based in Houston, TX, has 42 field offices, 24 marketing offices nationwide, and 1 of each in Canada. G C employs close to 2,000 individuals and is considered a leader in the collection field.

In addition to servicing many Fortune 100 companies, G C is responsible for the average return of over $18 million per year in student loans to the U.S. Government. G C has also provided 31 offices of the Internal Revenue Service with a fully automated in-house collection system which has resulted in a $40 million annual savings to the IRS. In one site alone, collections improved by 40 percent in the first 4 months our system was in operation.

We are grateful for the opportunity to testify today on the merits of S. 209, and we appreciate the subcommittee's early attention to this bill. I would like to thank Senator D'Amato for sponsoring and promoting its passage.

Substantial improvements have been made in the Government in its ability to collect its debts over the last several years. Among these improvements are the greater use of collection agencies, credit bureaus, and other measures such as salary offset and tax refund offset from taxpayers on Government debts. These efforts have resulted in an overall decrease in the default rate of student loans.

However, while the rate is falling, the amount owed is increasing, as is the cost of supporting that debt. The latest estimate shows that a total of over $3 billion is now in default, and the cost of the debt is expected to reach $500 million in 1986.

When you are looking at the tremendous budget deficits, even this half billion dollars is significant.

The implementation of aggressive collection efforts has strong, bipartisan support. After all, none of us wants to see the public support now available undermined.

Further, we do not want to signal to the U.S. public that cheating the Federal Government is excusable. To fortify our Government loan programs and to curtail additional default, we must further demonstrate that the Government is, indeed, serious about collecting its debts.

S. 209 would authorize the Department of Justice to use private attorneys to litigate delinquent Federal debt. This authority is necessary in order to alleviate the backlog of debt-collection cases mounting at the Department of Justice and to provide prompt, timely litigation, which is critical for successful collection.

G C Services supports this legislation because it would enable our collectors to indicate that litigation is a likely consequence for failure to pay back a debt owed to the Federal Government. At present, we cannot inform the debtor of possible litigation, because realistically, few cases culminate legal action. The inability of a collector to litigate can be compared to a soldier without a rifle.

We anticipate that, as litigation becomes more prevalent, however, the actual need for litigation will decrease. This is because debtors who can afford to pay will pay once they are made aware that a legal action will be pursued if they do not.

Therefore, traditional collection activities should not be bypassed in favor of immediate litigation, as litigation may not ultimately be necessary. Collection agency activity will result in a more prompt and less expensive return of funds to the Federal Government, as lengthy court procedures can most times be avoided.

G C Services wishes to emphasize that both collection and legal efforts are dramatically more successful if they are initiated soon after the debt becomes delinquent.

With respect to collection efforts, a prompt call to the debtor alerts the debtor that the creditor is serious about the debt. In addition, it may cause the debtor to give priority to that debt, especially if the debtor has other delinquent debts in which no other debtor activity has occurred.

As for litigation, the statute of limitations varies from State to State and can be as short as 2 years. If legal action is not undertaken before the statute runs, the debtor usually escapes repayment.

In order to facilitate timely litigation of Federal debt, it is presently our understanding that the paperwork will be transferred directly from the collection agencies to the law firm selected by the Department of Justice.

A previous Senate report, specifically Senate Report 98–511, described the authority contained in virtually the same legislation as follows. I quote:

> In the event that claims of indebtedness are referred to a private collection agency under a contractual agreement, the executive or legislative agency has the authority to refer a claim from the collection agency to the private counsel. Nothing in this section, however, prohibits an executive or legislative agency from including a provision in its contract with a private collection agency authorizing such agency to refer claims of indebtedness to a private counsel which has been retained by the Department of Justice.

We view this as a critical component of this legislation.

In conclusion, G C Services believes that the enactment of this legislation will enhance efforts to collect a large portion of the over $40 billion in total delinquent debt owed to the U.S. Government.

Apparently, the Senate also recognized the propriety of this bill when it passed the same legislation last year with nearly a unanimous vote. We are pleased that this subcommittee has begun its consideration of S. 209, and we urge that its passage be vigorously pursued.

Thank you for your consideration of our views.

Senator COCHRAN. Thanks very much, Mr. Dawson.

We will now hear from Mr. Carleton Fish.

Mr. FISH. Thank you, Mr. Chairman and Senator D'Amato and members of the committee. My name is Carleton Fish. I am direc-

tor of public affairs of the American Collectors Association. With me this afternoon is William H. Hearne, Jr., of Miami, FL, who is a former president of ACA, and a current national director, and member of our national legislative counsel.

We would like to thank the chairman and the members of this subcommittee for holding this hearing and to express our support for S. 209.

The American Collectors Association is an international organization of approximately 3,100 debt collection businesses, most of which are concentrated in the United States. ACA members handle the collection of past-due retail, professional, and wholesale accounts receivable for nearly 1 million credit grantors.

ACA supported the Debt Collection Act of 1982 when it was enacted and believes that the work this committee is doing to help the Federal Government recover its past due accounts is commendable. We believe that Senator D'Amato's bill, S. 209, will enhance this effort by providing the additional collection tool of litigation through private attorneys.

We are in agreement with the thrust of this legislation. Our interest in appearing before the committee this afternoon is to ensure that adequate safeguards be imposed upon law firms under contract with the Government to ensure their compliance with all appropriate Federal and State laws governing debt collection, including the Fair Debt Collection Practices Act.

We believe that when Federal claims are forwarded to attorneys, either through private sector debt collection agency contractors or directly from Federal agencies, the Federal Government must take steps to ensure compliance by law firms with the FDCPA, as well as State and local laws governing debt collection.

It is our position that the Fair Debt Collection Practices Act provides minimally acceptable standards for third-party debt collectors and no one engaged in collecting consumer debts should be exempt.

Federal agencies should be directed to require documentation from law firms of FDCPA compliance and evidence of employee training about the requirements of the act prior to forwarding accounts to attorneys for litigation. This will guarantee fair treatment of all consumers contacted by third-party debt collectors, regardless of the title or firm under which such collectors act.

We also respectfully ask that the committee express its intent that the use of private attorneys by Government agencies will not exclude their authority to use debt-collection businesses. In addition, we would recommend that debt-collection businesses under contract with Federal agencies be allowed to refer accounts to attorneys for litigation.

During the last 18 months, ACA has conducted more than 20 training seminars across the United States devoted entirely to the Fair Debt Collection Practices Act to help members and their employees comply with the act.

Our association has also written a manual, now in its third printing, for members on the FDCPA, which a spokesperson for the Federal Trade Commission has called the finest manual available anywhere on the FDCPA.

Expanding S. 209 to include these recommendations will provide the Federal Government with the most effective and efficient method of collecting delinquent accounts.

This concludes my formal statement, Mr. Chairman, and if I may, I would like to ask Mr. Hearne to make his brief statement.

Senator COCHRAN. Mr. Hearne, you may proceed.

Mr. HEARNE. Thank you, Mr. Chairman. Good afternoon, Mr. Chairman, Senator D'Amato.

My name is Bill Hearne, and I have owned a collection agency in Miami, FL for 24 years. I appreciate the opportunity to appear here today and offer some comments.

The American Collectors Association has been a consistent advocate of debt collection regulatory legislation throughout the years and has guided and encouraged its members to maintain high standards of business conduct.

The Debt Collection Act of 1982 was an important first step toward the recovery of the billions of the dollars in outstanding debts owed to the Federal Government, and some of the Federal agencies have had outstanding results in their debt collection programs through the use of third-party debt collection contractors.

According to the Office of Management and Budget, seven Federal agencies are currently using private collection firms to collect portions of their debt portfolio. Six of the seven showed an increase in collections in 1984 over 1983. While these increases cannot be totally attributed to the work of the collection agencies, we feel their contribution certainly has an effect on these figures.

ACA supports the use of private attorneys for litigation of past due accounts, provided that the effective services already furnished by debt collection businesses are not excluded.

Few attorneys are equipped to collect accounts on methods employed by debt collectors. Because lay collectors cannot sue, they do everything possible before referring an account to an attorney for litigation. Obviously, it is much more cost-effective to collect an account with a collection letter and a 22-cent postage stamp and a $3 long-distance phone call than to pursue it in court.

We believe that private sector collectors under contract with the Federal Government will be even more effective with the additional procedure of litigation by private attorneys. In the private sector, a creditor places claims with a collection agency and authorizes that agency to forward the claim to an attorney when the agency deems litigation necessary.

When the collection agency has the authority to make such a referral, this, alone, can provide the needed motivation to ensure payment without the added expense of litigation.

While S. 209 does not provide for the use of this procedure by collection agencies under contract with the Federal Government, the possibility of such a procedure should be considered, since it would provide Federal agencies with the best possible return on their delinquent accounts.

Again, this step would only be taken after routine collection procedures have been exhausted.

Mr. Chairman, this completes our formal testimony. We would be pleased to respond to any questions.

Senator COCHRAN. Thanks very much, Mr. Hearne.

We will now hear from Mr. Emil Hartleb.

Mr. HARTLEB. Good afternoon, Mr. Chairman and Senator D'Amato. My name is Emil Hartleb. I am vice president and general manager of Dun & Bradstreet Government Services. Dun & Bradstreet is the largest commercial collection agency in the United States and is also the largest worldwide, having over 100 offices in countries throughout the free world.

We process more commercial accounts for collection, both in numbers and dollars, than any other collection agency and have a greater customer base, over 65,000 domestic customers.

Dun & Bradstreet is primarily engaged in the collection of commercial accounts, that is, our definition is delinquent accounts for services and products arising between a business or government entity and another business, governmental or professional entity.

We are not involved to a great degree in the collection of consumer accounts.

It is my pleasure to be before the committee this afternoon, and Dun & Bradstreet appreciates the opportunity afforded to present our views on S. 209.

My comments will be brief. My verbal comments today will be specifically directed to S. 209. We have provided written testimony. Generally, Dun & Bradstreet enthusiastically supports the direction of this legislation. I think the previous folks that have been before the committee have testified to the benefit of using private sector attorneys and litigation. I am not going to rehash it.

Litigation is a tried and proven collection tool that will enhance amicable collection efforts.

We applaud the efforts of this committee and Senator D'Amato in your efforts to pass this legislation. We believe, because of the existing large Department of Justice civil collection litigation backlog and the likelihood that more aggressive collection actions on the part of Federal agencies will exacerbate the backlog, there is an immediate and pressing need to provide assistance to break the litigation backlog.

The use of private counsel will provide the Government with an important tool to assist in their efforts to cure and control the litigation backlog.

The purpose of legislation to make use of private counsel should focus in on the need, and that is, namely, the provision of litigation services.

With the central purpose of S. 209 in mind, we address specific issues within the proposed legislation. For the sake of brevity, I consolidated those comments.

Our written testimony provides specific line-by-line comments, particularly about some of the wording that exists in the legislation.

But by and large, we believe that S. 209 does not provide Federal agencies with access to important and valuable resources in the private sector for cost efficient fowarding or placing of accounts with private counsel. Commercial collection agencies, by their regular experience in fowarding accounts to attorneys throughout the United States, have acquired a knowledge of law firms in various parts of the country who have demonstrated their competency, ex-

perience, and reliability in handling commercial accounts and litigation, and in enforcing judgments.

The commercial collection industry knows and understands the reporting and monitoring requirements necessary to make this system work. It would be a shame if the head of Federal agencies were denied the choice and access to this valuable resource. Dun & Bradstreet believes Federal agencies should be provided with the option to use collection agencies for fowarding to attorneys, along with the other alternative presented in S. 209. Providing the options will allow Federal agencies to make the most cost-effective decisions for the Government.

We also believe that S. 209 as it now stands favors the large national law firm and will adversely impact the competitive ability of many experienced, reputable, and capable local law firms to obtain accounts for litigation.

Thank you for allowing us to present our views. If there are any questions, we will be pleased to answer them.

Senator COCHRAN. Thanks, very much, Mr. Hartleb.

Let me say, I congratulate you on your choice of companions today for the hearing. I see you have Chuck Tower with you today.

Mr. HARTLEB. Yes, sir.

Senator COCHRAN. He is one of my tennis playing friends and does a good job here.

I am glad to have the benefit, frankly, of the observations of this panel. Your are all in businesses where you are every day confronted with the practical problems of debt collection. You are experienced in that area. You make your living doing that, and I think this is an important consideration for us as a committee to take into account your views and your opinions.

I think this is a very valuable part of our hearing today. As a practicing attorney before I got into this political business, I had some experience, not a lot, not as much as Mr. Nussbaum, Billy Guice, and Mr. Koger have had as attorneys in the commercial law practice, but some practical experience that you can't disregard.

We had in our building in the law firm where we shared space some agencies involved in the same business you are involved in who were very successful in collecting delinquent accounts in many kinds of commercial areas.

I think there is a way to write legislation and to report legislation to the Senate that includes some of your observations to make sure that we protect the interests of the industry that you represent, that you are involved in.

I don't think we have to substitute, for instance, lawyers for nonlawyer collection agencies.

We shouldn't necessarily have legislation that prefers one interest as against another. I don't think that is what the purpose of the legislation is. I know that is not the intent of this Senator, and we are going to try to make sure that your interests are recognized as we proceed to give the Federal Government some extra leverage, some powers that apparently don't exist now to take advantage of the private sector in a more realistic way to collect debts that are owed to the Government that are not now being collected.

Your thoughts are helpful, and I think we will certainly take into consideration everything you have said.

I wonder, in connection with Mr. Hartleb's comments, since his business, Dun & Bradstreet, is aware of the background and the expertise of law firms and others involved in legal collection accounts, that there would be some revision for the referral to lawyers by private businesses rather than the Department of Justice.

Did I hear you right? Is that what you are recommending, that we include that authority in this legislation?

Mr. HARTLEB. Yes, Mr. Chairman. I think that should be an option, along with referral by the Department of Justice and Federal agencies. It is a cost effective private sector system that should be made available as an option to the agencies. I am sure other members of the panel here from the collection industry also refer to attorneys for collection. In our written testimony we gave a resume of the steps that we go through in forwarding accounts, and I am sure that other people in the industry follow very similar procedures.

Senator COCHRAN. Is this suggestion a suggestion that would be shared by other members of the panel? Are there any differences of opinion among other witnesses about that particular authority that should be contained in the law?

Mr. DAWSON. Mr. Chairman, G C Services utilizes a network of over 200 attorneys that has the ability to file suit in any judicial district in the United States. This network of attorneys is used to file suits against debtors every month as a service to our clients. We have an entire staff of paralegals and attorneys that coordinate the litigation process through the network of attorneys. As some of the previous panels have stated, the real backbone in filing suit is the ability, once the judgment is obtained, to collect the account. That is what our staff of paralegals and attorneys actually do in helping the network of attorneys once judgments are obtained.

We understand that the Justice Department wants the control and the authority to choose the attorneys that are used and the ability to audit those attorneys. The Deparment of Justice has expressed their interest in knowing the network of attorneys G C Services uses and which ones perform competitively. Even though G C has a function network of attorneys we are willing to use any attorney that the Department of Justice chooses.

Senator D'AMATO. Mr. Chairman, S. 1668, the predecessor bill to this pending legislation, was passed by the Senate last year and included language which I believe addressed the issue which you raised today. That report reiterated the Senate's intent that the cost effective use of collection agencies should be continued and Federal agencies were not precluded from providing in their contracts with collection agencies for the subsequent referral of cases to law firms retained by the Justice Department.

Realism dictates that unless we give the Attorney General's office the widest degree of latitude possible in implementing this bill, we are not going to pass a bill in both the Senate and the House. I am afraid, Mr. Chairman, that we could report this bill out of committee and still have it die, notwithstanding those who have come forward from the administration and said, "Oh, yes, we want this," if they really want it, they haven't showed the kind of determination that I would think necessary to make this a priority. I hope that we could work together, and not get caught in that

crossfire that they might like to see take place and not have the bill pass.

I think that if our staffs work together, we can shortly report the bill out of committee. I hope to see some very clear language of legislative intent spelling out that we do not intend to rock the boat with respect to the prerogatives of the Attorney General's office. The end result should be a continual flow of accounts from the various agencies to the private collection experts and the collection of the outstanding delinquent debts.

Thank you, Mr. Chairman.

Senator COCHRAN. My subcommittee staff advises me that as drafted, S. 209 does not preclude collection agencies from making referrals to law firms. I don't know whether we need clarification. We may need to take a look at that. We will do that before we report out the bill, and in drafting a report, we will be sure that this is made clear.

I have no other questions. If the Senator has no other questions, we, again, thank you for being here and participating in our hearing and contributing in the way that you have. You have been very helpful to the committee, and we appreciate that.

[The prepared statements of Messrs. Horn, Fish (with attachments), and Hartleb (with an attachment), follow:]

STATEMENT OF

RICHARD L. HORN, CHAIRMAN

PAYCO AMERICAN CORPORATION

BEFORE THE

SUBCOMMITTEE ON ENERGY, NUCLEAR PROLIFERATION

AND GOVERNMENT PROCESSES

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS

CONCERNING

S - 209

SEPTEMBER 26, 1985

Mr. Chairman and Members of the Committee:

INTRODUCTION

My name is Richard L. Horn, Chairman of the Payco American Corporation. I have been in the debt collection business for over 30 years. It is an honor to appear before you today in support of S - 209. This bill provides one more tool needed by the government in the effective management of its receivables.

First, I would like to congratulate you Mr. Chairman and Members of this Committee for your continued concern over the growing debt due the United States Government. This Committee has been in the forefront of major changes in the attitude of government agencies in the collection of debts. In the past, government agencies used minimum standards as their maximum effort. Now we find agency developing internal procedures which are creative and effective. The Debt Collections Act of 1982 was a keystone in changing past attitudes, and provided additional collection tools to government agencies in their attempt to catch up with the private sector. Now is the time to provide the authority that will assure prompt litigation in those cases wherein just debts are due the government, and the means to pay are available.

As I have said many times before, "There is no such thing as an unpaid account." People that pay their bills also pay for those who can and won't pay. With the Debt Collections Act of 1982 in place, the S - 209 authority will let it be known that payment of a government obligation

ranks just as high as other debts, and taxpayers' dollars are going to be fully recovered.

With the dramatic expansion of consumer credit the competition for the dollar repayment is becoming keener. With the assistance provided in this legislation the Federal Government's chances to recover their dollars are dramatically improved.

The deficit is a serious concern to all of us. The taxpayer does not wish any more tax burden on his back. Many do not want curtailments on entitlements or cuts in defense spending.

Proper debt management, of which collections are an important part, could be considered a third way to help reduce the deficit.

It is estimated with accounts cancelled by the statue of limitations, the cost of debt servicing, and the interest the money could earn if collected would be $5,000,000,000 a year on past due non-tax receivables outstanding. This is in addition to the billions in principle that could be recovered.

Payco American
Government Experience

Here is some background data on Payco American which will reflect our scope knowledge and experience in the industry. We are now in our

fifty-second (52) year of business, and this continued service to the financial community is as a result of the trust and caliber of service provided. Many of our clients now consider our services as a part of their financial planning.

In 1984, over one billion in past due receivables was referred to us for collection. We collect commercial and consumer accounts. Many of our clients are Fortune 500 concerns.

We have 2100 employees located in 54 offices throughout the major metropolitan areas of the United States. To date Payco American has collected $50,000,000 of defaulted student loans for the Department of Education.

Since 1970 I have worked with several Congressional Committees: the U.S. General Accounting Office, the Office of Management and Budget, and a number of federal agencies in an attempt to provide information and understanding to the government, so that people in government will understand the need to seek professional assistance in debt collections, just as private industry has been doing for years.

Payco American's association with the Federal Government dates back to 1972, when our University Accounting Services subsidiary was retained by the Department of Health, Education and Welfare to service the Cuban Loan Program. Today, we serve the Department of Education by collecting defaulted Federal Insured Loans, and National Direct Student Loans from offices located in Oakland, California and Dublin, Ohio.

Payco American was one of the first private sector firms to receive a major collections contract from the Federal Government when it began its pilot program for the Department of Education in 1979. In 1982, we were the only organization to receive a second contract to continue our efforts in this area.

We have also served other Government agencies through special training and consulting programs. The Government has shown its trust in Payco American's collection techniques by utilizing many of our methods. Collection training programs designed by Payco are currently being used by the Social Security Administration, and Farmers Home Administration. The Internal Revenue Service is using T Frank Hardesty, our Director of Management Services, to conduct training seminars for IRS collectors.

## Collection Litigation in the Private Sector

The general procedure for a creditor who has been unable to collect a delinquent debt through his own efforts is to do the following:

- Place claims with a collection agency.
- Authorize the collection agency, as its agent, to forward the claim to an attorney selected by the agency unless the creditor chooses a specific attorney. Contingent Fee Compensation agreed to by the creditor and authority for the creditor only to authorize, compromise or terminate litigation is the standard practice.
- Payco American by its experience in forwarding claims to attorneys in all parts of the country, has acquired a relationship with law firms geographically positioned which are competent, experienced, reliable and provide prompt legal services.

- Debt collection and enforcement of judgments is a speciality in the law and it requires qualified attorneys in the geographical area where the debtor is located.

It is important that criteria be established for selecting and contracting with law firms interested, qualified and experienced in debt collection. Also, it is important to retain private counsel for the sole purpose of collecting claims referred and require counsel to be reimbursed out of the proceeds of the collections, thereby retaining counsel on a contingent fee basis. The costs are always in direct relation to results.

When accounts are referred to attorneys, Payco and its client require effective and timely status reports. The Payco American reporting system is integrated into our operations and the operation's of our client. Hence, information is available to all parties and on a timely basis.

Justice has done a fine job when you consider their current staffing. Because of the current backlog, we have to look at both short and long term solutions. In addition to the backlog at Justice, many federal agencies have backlog because of one of more of the following problems:

- Have not completed required steps under the claims and collections joint standards.
- File documentation is incomplete.
- Internal collections not up to standard.
- Dollar amount less than Justice requirements.

Most of the above problems cannot be resolved by contracting with law firms for litigation services. The problem must be addressed systematically. In other words, agencies should first attempt collections. If not successful, the accounts should be referred to private collection firms, and only after this step should litigation be considered.

The exception is unliquidated claims. The professional legal expertise of the lawyer is then needed. An unliquidated claim in this sense is when an amount due is not certain, or there are offsets, or where there is reasonable dispute in the value of goods or services purchased. To minimize the considerable clerical burden on the Department of Justice, the private collection firm would transfer accounts directly to law firms selected by Justice.

If the debtor becomes aware that litigation is available, and will be instituted promptly, fewer accounts will require litigation. Therefore, it is important that once the decision is made to litigate, the account should be in the hands of an attorney in less than one week, and the attorney will have taken action within 30 days.

Collections through litigation are not automatic. If a creditor decides to litigate, and judgment is obtained, the collection process must begin again. Collection of a judgment involves location of debtor, location of assets, location of place of employment, identification of bank accounts and equities in autos and property. The objective is cash recovery not an academic victory of obtaining judgment.

We endorse the concept of using private attorneys to supplement the government's collection efforts. We suggest that federal agencies be authorized to add to their contracts for collections the same extension of services purchased by most of our private clients, and that is, instruct the private collection agency to forward the accounts to an attorney or law firm for litigation, after the private firm has had a reasonable period of time to attempt collections. The federal agency should specify terms and conditions for litigation in its "Request for Proposal" and the contractors would provide details of their operations in their proposal.

The contractor could provide a list of the law firms to be used, and these firms could be reviewed by Justice and approved, thereby benefiting from the years of experience of private collection agencies. Over the years we have found some 125 law firms who are effective in account litigation.

We would hope that this would be a quick and simple process. A major benefit of this procedure would be that only services required would be added to the cost of the contract, and in many cases passed on to the debtor.

SUMMARY

There is a duty to manage federal credit programs and collect the billions of past due dollars owed to the American taxpayer.

Through the leadership, wisdom and commitment of this Committee giant strides have been made. There is one more to go and that is to permit the team of the federal agency, the private collection agency and

legal counsel, approved by the Department of Justice, to administer an effective collection program.

The intent of this legislation should be clear that the services of the private collection agency shall not be circumvented so that accounts will be transferred from the federal agency directly to the law firm. The exceptions are where litigation is required on unusually large or unliquidated claims.

Mr. Chairman, I thank you for your courtesy in permitting me to offer these comments and would welcome the opportunity to provide any additional information to members of the Committee or its staff.

## DAILY/ANNUAL STATISTICS ON DELINQUENT DEBTS

MONIES LOST TO THE STATUTE OF LIMITATIONS------$ 6.7 MILLION/DAY

INCREASED GOVERNMENT BORROWING COSTS----------$ 5.8 MILLION/DAY

LOST INTEREST (AT RATE OF 4%)----------$ 2.2 MILLION/DAY

TOTAL----------$14.7 MILLION/DAY

TOTAL MONIES LOST TO GOVERNMENT----------$ 5.37 BILLION/YR

DEBT COLLECTION ACTIVITY
FISCAL YEAR 1984 ($=MILLIONS)

| AGENCY/DEPARTMENT | DELINQUENT AMOUNTS | WRITE OFFS |
|---|---|---|
| AGRICULTURE | $6,235 | $91 |
| AID | $252 | $24 |
| COMMERCE | $354 | $92 |
| DEFENSE | $685 | $43 |
| EDUCATION | $3,976 | $390 |
| ENERGY | $38 | $17 |
| HHS | $623 | $378 |
| HUD | $1,715 | $822 |
| INTERIOR | $183 | $8 |
| JUSTICE | $27 | $118 |
| LABOR | $343 | $6 |
| SBA | $2,644 | $521 |
| TRANSPORTATION | $350 | $64 |
| VA | $1,415 | $79 |
| EXPORT-IMPORT BANK | $919 | $20 |
| ALL OTHER ACTIVITIES | $111 | $70 |
| TOTALS | $19,870 | $2,743 |

## DEBT OWED THE FEDERAL GOVERNMENT
## AS OF OCTOBER 1, 1984

| | |
|---|---|
| TOTAL DEBT OWED FEDERAL GOVERNMENT---------- | $315.3 BILLION |
| TAX---------- | $53.2 BILLION |
| NON-TAX---------- | $262.1 BILLION |
| OVERDUE DEBT---------- | $49.6 BILLION |
| TAX---------- | $29.7 BILLION |
| NON-TAX---------- | $19.9 BILLION |
| LESS THAN 1 YEAR OVERDUE---------- | $29.0 BILLION |
| TAX---------- | $21.4 BILLION |
| NON-TAX---------- | $7.6 BILLION |
| MORE THAN 1 YEAR OVERDUE---------- | $20.6 BILLION |
| TAX---------- | $8.3 BILLION |
| NON-TAX---------- | $12.3 BILLION |
| MORE THAN 6 YEARS OVERDUE---------- | $ 10.35 BILLION |
| TAX---------- | $ 4.15 BILLION |
| NON-TAX---------- | $ 6.20 BILLION |
| WRITTEN-OFF IN FY 1984---------- | $364. MILLION |
| GOVERNMENT BORROWNING RATE---------- | 10.7% |

STATEMENT OF

CARLETON W. FISH

DIRECTOR OF PUBLIC AFFAIRS

AMERICAN COLLECTORS ASSOCIATION, INC.
4040 West 70th Street
Minneapolis, MN 55435

Before the

Subcommittee on Energy, Nuclear Proliferation,
and Government Processes
United States Senate

Concerning S. 209

September 26, 1985

Mr. Chairman and Members of the Committee:

My name is Carleton W. Fish. I am Director of Public Affairs of the American Collectors Association, Inc.

With me this afternoon is William H. Hearne, Jr., of Miami, Florida, a former President of ACA and a current National Director and member of our National Legislative Council.

We appreciate the opportunity to appear before this Committee to present the Association's position on S. 209 with respect to the litigation of debts owed to or guaranteed by agencies of the federal government.

The Debt Collection Act of 1982 was a very important first step toward the recovery of the billions of dollars in outstanding debts owed to the federal government. S. 209 would help to close the remaining gap in the debt collection process by enabling the Justice Department to contract with private law firms to litigate debt collection cases.

While ACA supports S. 209, we respectfully recommend that private sector debt collectors under contract with federal agencies, as agents for the heads of those agencies also be allowed to refer accounts to attorneys for litigation.

ACA feels that the Committee must express its intent that the use of private attorneys by federal agencies will not override the agencies' authority to use lay collections firms. In addition, we believe that adequate safeguards must be imposed upon law firms under contract with the government to assure their compliance with all appropriate federal and state laws governing debt collection, including the Fair Debt Collection Practices Act.

Background

The American Collectors Association, Inc., which was formed in 1939, is an international organization of approximately 3,100 debt collection services. All but about 100 of these firms are located in the United States. Members include sole proprietorships, partnerships and corporations, ranging from one-person offices to firms with more than 100 employees. Member offices are located in metropolitan areas, in smaller urban areas, and in rural communities across the nation.

ACA members handle the collection of past-due retail, professional and wholesale accounts receivable for nearly 1 million credit grantors. Last year approximately $12 billion in past-due accounts were referred to ACA members, and those members contacted approximately 20 million consumers who had promised to pay for goods and services by specific dates but who failed to keep those promises. These contacts resulted in the collection of nearly $3 billion.

In addition to the billions of dollars returned to private sector credit grantors, in the last year several ACA members, under contract with agencies of the federal government, returned millions of dollars to the coffers of the U.S. Treasury.

Consumer debtors contacted by ACA member collectors fall into several general categories. Most have fallen behind in payments due to various understandable reasons, such as unemployment, high medical bills, unexpected expenses or overbuying. The collector's job is to help them organize their budgets so that creditors can be paid. Only a small percentage are the "hard-core" debt delinquents who have no intention of paying for merchandise or services they purchase. The professional collector has to know how to handle this type of debtor also.

Special knowledge and skills are required by collectors to motivate people to pay past-due accounts, particularly when they don't want to pay. To help members acquire this knowledge and skill, ACA has a progressive education program which includes sponsoring more than 120 seminars each year to teach collectors basic psychology and communication skills, as well as compliance with federal and state laws and local ordinances. ACA also produces various audio and video training programs, as well as other materials, for members to use as training aids in their offices.

When accounts are referred by credit grantors to collection services, the overwhelming majority of these credit grantors are highly conscious of the procedures and techniques used because they are deeply concerned that the good reputations they have built be maintained. In turn, the overwhelming majority of collection services are aware of this concern and recognize their responsibility to conduct themselves in an ethical and businesslike manner. To do otherwise would diminish their chances of retaining clients and remaining in business. Throughout its 46-year history, ACA has guided and encouraged its members to maintain high standards of business conduct, and the thrust of ACA programs has always been in this

direction. A code of ethics and operations as well as a set of rules and regulations guide ACA members. Any members not abiding by these principles and procedures are disciplined or expelled from the Association.

In addition, the American Collectors Association and its affiliated state units have been consistent advocates of debt collection regulatory legislation through the years, from promoting and lobbying for passage of the first collection agency licensing law, which was passed in 1927 in the state of California, to the passage of the Fair Debt Collection Practices Act in 1977 which ACA supported in its final form, and on to the present.

Last year, ACA received two new national honors. In October, ACA received a plaque for its "outstanding voluntary self-regulation program" in the consumer debt collection industry at a Washington conference co-sponsored by the White House Office of Private Sector Initiatives and the American Society of Association Executives. For its efforts toward community improvement through voluntary programs, ACA also received a "C" Flag Presidential Citation at a White House ceremony in December.

S. 209

The process of collecting a past-due account is fairly straightforward, and several methods are employed by collectors in a series of successively persuasive steps. The first collection tool employed is generally the collection letter. A certain percentage of accounts will be collected on the strength of a good, third-party collection letter alone. However, if the account remains uncollected after the first letter, then further collection efforts are employed, including perhaps a series of letters, direct contact with the debtor by telephone and perhaps a personal visit with the debtor. Litigation is generally the final step in this collection process, employed when all else fails. Obviously, it is much more cost effective to collect an account with a collection letter and a 22-cent stamp or a $3.50 long distance telephone call than to pursue it in court. On the other hand, a certain number of accounts will not be collected any other way, and litigation will be necessary.

S. 209 will allow federal agencies to employ this important additional collection tool. ACA fully supports the use of private attorneys for litigation of past due accounts, provided that the effective services already provided by lay collection agencies are not excluded.

Several federal agencies have had outstanding results in their debt collection programs through the use of third party collection contractors. According to the Office of Management and Budget, nine federal agencies (including the Departments of Interior, Treasury, Education, Health and Human Services, Agriculture, Housing and Urban Development, and Defense, as well as the Small Business Administration, and the Civil Aeronautics Board) are currently using private collection firms to collect portions of their debt portfolio.

Of these nine, five agencies showed an increase in collections in 1983 from 1982. While the increases cannot be totally attributed to the work of the private sector agencies, their contribution certainly has an effect on the figures. In fact, the Department of Education has announced that in March, 1984, its collection agency contractors collected more than DOE internal collectors in two of three contract locations. Millions of dollars per month are returned to the U.S. Treasury through the efforts of these collectors.

The work of private sector collectors under contract with the federal government would be even more effective with the additional procedure of litigation by private attorneys. In the private sector, a creditor places claims with a collection agency and authorizes the agency, as its agent, to forward the claim to an attorney at such time in the collection process that the agency deems litigation necessary after performing tasks such as skiptracing and making initial and subsequent contacts with the debtor by letter and telephone. When the agency has the authority to make such a referral, it can, under the Fair Debt Collection Practices Act, explain to the debtor that if payment isn't made in the collection stage, litigation will result. In most cases, this alone can provide the needed motivation to insure payment without the added expense of litigation.

While S. 209 does not provide for the use of this procedure by collection agencies under contract with the federal government, the possibility of such a procedure should be considered, since it would provide federal agencies with the best possible return on their portfolios of delinquent accounts.

The provisions in the Debt Collection Act of 1982 requiring private sector debt collectors collecting claims for federal agencies to comply with the Fair Debt Collection Practices Act and all federal and state laws governing debt collection are important. Just as important are provisions in S. 209 that require law firms performing collection services on behalf of the federal government to comply with the Fair Debt Collection Practices Act. It is essential that this requirement of complying with the Fair Debt Collection Practices Act and all federal and state laws pertaining to debt collection be applied consistently to every third party collecting accounts on behalf of the federal government, whether that third party is a collection agency or a law firm. The best interests of all consumers, whether debtors or not, are preserved by firmly adhering to this requirement.

Private sector collection agencies have been complying with the Fair Debt Collection Practices Act since it took effect in March of 1978, and private sector collection agencies have implemented training programs and other mechanisms to educate their employees about the requirements of the Act and to assure their compliance with the Act. Indeed, during the last 18 months the American Collectors Association conducted more than 20 training seminars across the United States devoted entirely to the Fair Debt Collection Practices Act to help members and their employees comply with that Act. The Association also has written a manual, now in its third printing, for members on

the Fair Debt Collection Practices Act, which a spokesperson for the Federal Trade Commission has called "the finest manual available anywhere on the Fair Debt Collection Practices Act." ACA has also prepared an audiocassette training program on the FDCPA. ACA's Code of Ethics and Operations requires all Association members to comply with the Fair Debt Collection Practices Act and all other federal, state and local laws governing debt collection, and the Association is constantly vigilant regarding member compliance.

When federal claims are forwarded to attorneys, either through private sector debt collection agency contractors or directly from the federal agencies, the federal government must take steps to insure compliance with the Fair Debt Collection Practices Act by law firms. Federal agencies should be directed to require from law firms documentation of FDCPA compliance and evidence of employee training about the requirements of the Act prior to forwarding accounts to attorneys for litigation.

Summary

Mr. Chairman and members of the Committee, the American Collectors Association believes that the work this committee is doing to help the federal government recover its past-due accounts is significant. The Committee can take that collection effort one step further now with approval of S. 209 which would provide the additional collection tool of litigation through private attorneys.

Our Association believes that government debt collection efforts could be further enhanced by giving private sector debt collection agencies holding or securing debt collection contracts with the federal government the authority to forward accounts to attorneys for litigation.

We also believe that the federal government must provide safeguards to insure that law firms comply with the Fair Debt Collection Practices Act and other federal and state laws governing debt collection.

Thank you very much for the opportunity to present the thinking of the American Collectors Association, Inc. with regard to S. 209.

We would be pleased to answer any questions you may have.

# TESTIMONY REGARDING SENATE BILL S.209

Presented to the Subcommittee on Energy, Nuclear Proliferation and Government Processes

Dun & Bradstreet Commercial Collections
September 26, 1985

## INTRODUCTION

Dun & Bradstreet is pleased to present its views on proposed legislation contained in Bill S. 209. A bill to authorize contracts retaining private counsel to furnish collection services in the case of indebtness owed the United States.

We provide our written statement of testimony for the record in the following format:

- **Brief Introduction to Dun & Bradstreet Commercial Collections.**
- **Collection Industry Background**
- **Methodology used by the Industry in Placing Accounts with Private Sector Attorneys.**
- **Overall Comments on S. 209**
- **Specific Comments on S. 209**

Verbal comments made before the Committee briefly summarize our support and concerns regarding S.209.

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## BRIEF INTRODUCTION TO DUN & BRADSTREET COMMERCIAL COLLECTIONS

My name is Emil Hartleb, I am Vice President and General Manager of Dun & Bradstreet Government Services an operating entity of Dun & Bradstreet Commercial Collections.

D&B is the largest commercial collection agency in the United States, and is also the largest world-wide having over 100 offices in countries throughout the free world. We process more commercial collection accounts both in numbers and dollars than any other collection agency and also have a greater customer base, over 65,000 domestic customers.

D&B is primarily engaged in the collection of commercial accounts, that is delinquent accounts for services and products arising between a business or governmental entity and another business, governmental, or professional entity.

## COLLECTION INDUSTRY BACKGROUND

The collection industry can be divided into two main segments:

- **Commercial Collections**
- **Consumer Collections**

In the commercial collection industry segment debtors are comprised of business, governmental or professional entities. The commercial collector, in addition to individual business owners or professional persons, is continually dealing with specialists in the areas of:

- o Accounting
- o Finance
- o Management
- o Law
- o Banking
- o Real Estate Management

The average size of collection accounts within the commercial collection industry are considerably larger than those in the consumer collection industry. For example, in the recent GSA Solicitation, for government wide debt collection, the average amount of estimated delinquent administrative debt due from commercial organizations is about $4,700 or five times greater than the average amount of comparable debt due from consumers. The figures for commercial loan debt are similar, $44,000 or five time the size of comparable debt due from consumers.

In addition to the differences in the make up of the debtor and size, commercial accounts also differ in the form of debt. For example, commercial loan debt is almost always collateralized with business assets of one type or another, making recourse to

the collateral an important option in pursuing recovery of delinquencies, as contrasted with collecting debt from wage earners in rented quarters. Because of the differing nature of the consumer and commercial collections specialties has arisen. In the commercial collection arena less emphasis is placed on routine collection procedures and more on "working out" and negotiation of hardship and disputed accounts. The commercial collection agency forwards accounts extensively to private sector attorneys, and has built up over the years an effective methodology for forwarding accounts.

## METHODOLOGY USED BY THE INDUSTRY IN FORWARDING ACCOUNTS TO PRIVATE SECTOR ATTORNEYS

The following is a synopsis of forwarding procedures at D&B. They closely parallel those of the commercial collection industry except that D&B is more automated than most other members of the industry.

The vast majority of accounts placed for collection are collected by amicable means without the use of litigation. Litigation accounts for about sixteen percent of the accounts collected. D&B makes use of extensive amicable collection efforts ranging the gamut from letter demands to extensive face to face negotiations. We believe this extensive and varied effort is necessary because litigation is an expensive and time consuming process and one that should only be used after every reasonable amicable step has been exhausted to resolve the delinquent account.

Our customers benefit from these extensive amicable efforts by lower costs of collections. The debtor community also benefits by being provided with ample opportunities to workout financial difficulties at less cost and avoid the trauma and stigma of litigation.

When all amicable efforts to collect accounts are exhausted and only then, a decision is made whether an account should be sent to an attorney for litigation. Not all unpaid accounts will be forwarded. Decisions not to forward are based upon the following criteria:

- **Viability of the debtor entity. Does debtor have the ability to pay? Is the debtor still operating?**
- **Dollar size of the account. The account may be too small to justify expenditure for litigation. Usually we are talking about cases under $500.**
- **Customer's preference. The customer does not wish to litigate.**

If a decision is made to forward an account to an attorney, the D&B Account Manager prepares a resume of collection actions which includes recommended action and directions. This is passed to the attorney along with documentation provided by the customer. Documentation may consist of: invoices, statements, contracts or correspondence. When the attorney receives the case he or she is well prepared to go forward with litigation.

I'd like to take a moment and discuss the directions we provide attorneys when forwarding accounts. Dun & Bradstreet subscribes to the Statement of Principles of the American Bar Association

and the Operative Guides for Forwarders and Receivers of the Commercial Law League of America (CLLA). Copies of the CLLA Operative Guides are provided with this written testimony. These guidelines are incorporated in all our forwarding directions to attorneys. In a nutshell they state the following:

- **The attorney is the client's attorney (Dun & Bradstreet's customer's attorney). The attorney does not represent D&B. The relationship is one of "client/attorney".**
- **Attorney is instructed not to make any compromises or incur any costs without the expressed permission of the customer.**
- **Attorney is instructed as to his obligation to provide periodic status reports to D&B, the client's forwarding agent, so a complete electronic record of the account is maintained while in the attorneys hands.**

Dun & Bradstreet has a network of over 1,200 attorneys countrywide to service the litigation needs of its customers. Most of these attorneys have been receiving accounts from D&B for many years and are well experienced in the commercial collection practice and understanding customer/client needs for status. All attorneys are bonded. The bond is provided by D&B or a Law List.*

After an account is forwarded to an attorney D&B provides a tracking system. The tracking system is automated but also allows for human intervention when the need arises. I'll briefly explain the way the system works:

- - - - - - - - -

* Law Lists publish lists of recommended attorneys specializing in the practice of commercial law on a regional basis. They also provide malfeasance bonding and conciliation services.

- o If an attorney does not provide a timely update, the system triggers written letter follow-ups.

- o If no response is received to the letter follow-ups, which is not a usual situation, the account is entered on a daily action list. It is the Account Managers duty to call attorneys and obtain a status report.

- o If the Account Manager is unable to obtain a report, the Law List is asked to contact the attorney and obtain a report. I should point out the need to do this occurs in less than one percent of the cases. Again, the attorneys we use are experienced and understand the need for update in an "attorney/client relationship".

- o When an attorney reports status, our system is updated. This means that we have a permanent electronic record of the status of an account. This allows us to provide clients with either individual case reports or monthly summary reports as they wish. It also allows us to zero in and provide the status and inventory of all clients accou in litigation.
  On the other side of the coin, it allows D&B to continually assess attorney performance. On a quarterly basis each attorney's performance is evaluated regarding:

  - Collection - dollars collected to dollars received. This is related to his peer group performance.

  - Reporting - does the attorney report in a timely fashion, and does he provide quality reports. Quality of reporting is important as we are interested in seeing good progressive actions on accounts handled.

  - General deportment - that have come to Account Managers attention such as slowness in remitting and complaints or accolades from our customers.

Forwarding accounts to attorneys can be a complicated business.

At D&B we pride ourselves as having:

- o An outstanding relationship with the legal community. Attorney's are very interested in receiving accounts from D&B because of:

  - the quality of placement in terms of background information and elimination of deadwood accounts.

  - maintaining a professional relationship. No fee splitting or constant harangue.

- **A state-of-the-art system for tracking attorney performance supplemented by people who understand their jobs and go out of their way to maintain proper attorney/client relationships.**

- **Constant review of attorney performance to insure our customers receive the best in civil litigation services.**

OVERALL COMMENTS ON S. 209

With the backlog of commercial and consumer civil litigation accounts that exists at the Department of Justice, there is a real pressing need to provide assistance in the area of litigation services.

A regular and accepted practice in the commercial sector of the economy is for businesses to place delinquent accounts with law firms or collection agencies to assist with litigation or collection. While some very large accounts are placed by commercial creditors directly with law firms for litigation, the more general procedure is to place delinquent accounts with collection agencies. The collection agency will exercise all ethical and legally perscribed means to collect. If, and only if, collection is not possible by amicable means will commercial collection agencies forward or place accounts with local qualified law firms.

This proposed legislation allows Federal Government agencies to improve their collection efforts by improving the efficiency of

litigation services. Dun & Bradstreet enthusiastically supports the general direction of this legislation, and believes it provides agencies with an additional tool, and the Department of Justice with the assistance it needs to resolve backlogged accounts.

However, litigation services should not be viewed as a panacea for solving the Federal Government debt collection problems. A comprehensive approach such as contained in OMB Circular A-129 is the real solution.

Before litigation the Federal Government agency should perform a cost/benefit analysis. Litigation is a costly step and one that should be weighed carefully.

SPECIFIC COMMENTS ON S.209

While we do, generally, support this legislation, there are a few sections that do raise concern. We like to address those now:

- **Bill title. We believe the title should be changed from collection services to litigation services. The next bullet will go into more detail on litigation services.**

- **Page 2, Line 10, Subparagraph (b) (1). This paragraph authorizes the use of private counsel to furnish legal services, which includes representation in compromise negotiation, and settlement.**
  **The Debt Collection Act of 1982 specifically prohibits these activities on the part of a collection agency. The recent GSA Solicitation also confirms this prohibition. We do not believe that private counsel should be engaged in negotiation, compromise or settlement unless it specifically arises as a result of the commencement of litigation. The wording of (G) (1) we suggest changing to:**
  **"The Attorney General may make contracts retaining private counsel to furnish litigation services which may include, as a result of the initiation of litigation, representation in negotiation, compromise and settlement in the case of any claim of indebtness owed the United States."**

As now worded private counsel is authorized to provide services prohibited for collection agencies. There are no reasons why private counsel should enjoy the privilege of providing these services and collection agencies be denied the privilege.
We strongly believe that the real solution is to provided both private counsel and collection agencies with the ability to represent the government in negotiation, compromise and settlement, subject to the final approval of the federal agency head.
In the commercial collection arena the resolution of disputed and hardship cases are an everyday occurrence. Providing this ability to collection agencies and private counsel will only speed up the resolution of accounts placed for collection.

o Page 3, Line 8 Subparagraph (2) D&B believe an important resource is being denied federal agencies as it precludes the use of collection agencies to provide forwarding to attorneys selected under paragraph 1 plus tracking and monitoring services.
Over the years, commercial collection agencies, by their regular experience in forwarding accounts to attorneys all over the U.S., have acquired a knowledge of law firms in various parts of the country who have demonstrated their competency, experience and reliability in handling commercial accounts in litigation and enforcing judgments.
The commercial collection industry knows and understand the reporting and monitoring requirements necessary to make this system work.
It would be a shame if the heads of executive and legislative agencies were denied the choice and access to this valuable resource.
D&B believes the forwarding of accounts should be addressed by providing federal agencies with the following alternatives:

- The Department of Justice forwarding to approved attorneys. The DOJ will maintain the monitoring and follow-up.
- The heads of executive and legislative agencies forwarding directly to approved attorneys. The agency providing the monitoring and follow-up system.
- Collection agency forwarding to approved attorney and providing the monitoring and follow-up systems.

Providing the choices will allow federal agencies to make the most cost effective decisions for the government.

o Page 3, Subparagraph 3 We believe the term legal services should be changed to litigation services.

o Page 4, Subparagraph C This provision only applies to contracts let for litigation services and not collection services.
The Federal Claim collection standards Part 103.1 a, states; "Agencies have authority to compromise under the Federal Claims Collection Act only if the amount of the claim exclusive of interest and related charges does not exceed $20,000."

Part 103.1 b, states that compromise on accounts above $20,000 rests solely with the Department of Justice.

If additional authority is granted by subparagraph C then exists in the Federal Claims Collection Standards, then contracts with collection agencies should also enjoy the same privilege.
D&B's experience in handling Federal Government commercial debt indicate the need for a quick turn around on the part of federal agencies to respond to compromise offers. We believe the legislation should address the necessity of amending the Federal Claims Collection Standards to set up a uniform and responsive system to address compromise offers. The system should address the information needed by agencies to make a decision, factors to be weighed and response times.

o Page 4, Line 8, Subparagraph (D) We believe the comments made regarding Page 3, line 8, subparagraph 2 apply here also. A valuable resource exists in the private sector in terms of attorney forwarding, monitoring and tracking systems and that the federal agency should have the option of availability.
The way this Legislation is now structured, it favors the large national law firm and will adversly impact the ability of many experienced, reputable and capable local law firms competing to obtain accounts for litigation. Forwarding through collection agencies who use approved and bonded attorneys provide a means by which the competitiveness of the litigation services marketplace can be enhanced.
Forwarding accounts through collection agencies also provides a cost effective alternative for the Comptroller General's Annual Audit function, addressed on Page 5, Line 11, Subparagraph (2) (a) of S.209.

# OPERATIVE GUIDES

## For Forwarders and Receivers

## Adopted By

## The Commercial Law League of America

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**ENABLING RESOLUTIONS**
**ADOPTED BY THE BOARD OF GOVERNORS OF**
**THE COMMERCIAL LAW LEAGUE OF AMERICA**
**ON JULY 6, 1974**

**RESOLVED,** That all provisions of any prior "Operative Resolutions" of The Commercial Law League of America are hereby repealed and made void; and

**FURTHER RESOLVED,** That the following "Operative Guides for Forwarders and Receivers" are hereby adopted by The Commercial Law League of America. These Guides shall be deemed to be recommendations for all forwarders (agencies or attorneys) and receivers (attorneys) in the handling of commercial claims as these terms are defined herein. The Guides may be incorporated by reference in the written authorization and forwarding contract between the forwarder and receiver; and

**FURTHER RESOLVED,** That the "Declaration of Fair Practices of Collection Agencies" as approved by the National Conference of Lawyers and Collection Agencies February 18, 1963, as same may from time to time be amended, is incorporated herein by reference; and

**FURTHER RESOLVED,** That it is not the intent of the Commercial Law League of America to adopt any Guide which may be or become inconsistent with the Code of Professional Responsibility of the American Bar Association or any Code of Conduct or law in any state or locality applying to forwarders and receivers subjected to jurisdiction therein; any Guide that is or becomes inconsistent shall be deemed inoperative.

## PART I—DEFINITIONS

1.1 Commercial Claim. A commercial claim is a claim which arises from an obligation to pay for goods sold or leased, services rendered, or monies loaned for use, in the conduct of a business or profession.

1.2 Agency. An agency is a collection agency to which claims are referred for collection by creditors.

1.3 Forwarder. A forwarder is a person who or an entity which, as the agent of the creditor, refers claims to attorneys for collection. A forwarder may be an attorney, a collection agency, a credit bureau, a credit insurance company, or any other entity which acts on behalf of the creditor as its agent, in the referral of claims for collection.

1.4 Receiver. A receiver is an attorney to whom an account is referred for collection by a forwarder, and who is thereby employed, as attorney for the creditor, to collect the same. Upon acceptance of the claim for collection, the full attorney-client relationship exists between the receiver and the creditor.

1.5 Law List. A law list is a publication which lists the names and addresses of attorneys and law firms, and which holds a current certificate of compliance from the Standing Committee on Law Lists of the American Bar Association.

1.6 Commission. A commission is the compensation payable by a creditor and earned by a receiver for his services in effecting collection of a commercial claim, in whole or in part, and is normally contingent and computed as a percentage of the sum collected.

1.7 Forwarding Contract. A forwarding contract is the agreement entered into between the creditor (or the forwarder as the agent of the creditor and with the creditor's consent) and the receiver, specifying among other things the commission agreed upon between the receiver and the creditor as the receiver's compensation for effecting collection, in whole or in part, of a commercial claim.

1.8 Suit Fee. A suit fee is a fee payable to the receiver in addition to the commission, for legal services rendered by the receiver for the creditor involving court action in connection with the prosecution of a commercial claim.

1.9 Cost Advance. A cost advance is a sum of money advanced by the creditor to the receiver, as a fund from which court costs are to be expended.

1.10 Retainer. A retainer is a sum of money paid in advance to retain the services of an attorney, and should be taken into account in determining the ultimate fee to be charged for services rendered and results obtained.

## PART II—GENERAL PROVISIONS

2.1 A forwarder, when so authorized by the creditor as his principal, may act for the creditor in the forwarding of claims, and when so acting is performing a service for the creditor separate and apart from the service performed by the receiving attorney, for which service the forwarder is entitled to be separately compensated by the creditor, the amount thereof being a matter of contract between the forwarder as agent and the creditor as principal.

2.2 Under no circumstances shall the forwarder receive a share of the compensation of the receiver; except that where the forwarder is an attorney primarily engaged in the private practice of law and there is an actual division of the work and responsibility between the attorney forwarder and the receiver, the compensation may be divided between them in proportion to the effort expended and responsibility assumed by each.

2.3 These guides are intended to apply in the absence of specific agreement to the contrary, but nothing contained herein shall prevent the parties from making an agreement at variance with these guides so long as such agreement is consistent with the enabling Resolutions.

2.4 Violation of these guides by a member of the League, or violation by a member of any agreement between the parties which supercedes these guides, may subject such member to disciplinary proceedings under Article IV of the By-Laws of the League.

## PART III—CONTRACTUAL COMPENSATION

### A. Commissions

3.1 Unless otherwise expressly agreed, commissions are contingent on the recovery of money or property.

3.2 In all cases where terms are stated in a forwarding contract, such terms control. However:

a. A mere statement by the receiver that he will not handle the claim except upon other terms will not establish his right to compensation other than as offered in the original forwarding contract.

b. A receiver objecting to the terms as set forth in the forwarding contract should either return the claim or withhold taking action on the claim until satisfactory arrangements are made with respect to compensation. The terms of the original forwarding contract shall prevail notwithstanding the fact that the receiver has performed services in connection with the claim, unless and until the terms are changed by agreement or acquiescence.

c. A forwarder shall be deemed to have acquiesced in the terms proposed by the receiver where the forwarder subsequently instructs the receiver to proceed, without making reference to the receiver's counter-proposal. A forwarder's mere request for a status report, however, shall not be construed as an instruction to proceed.

3.3 When a claim is collected in installments, the contractual commission rate shall apply to the aggregate of the installments collected, and not to each installment individually. In the event the forwarding contract provides for a declining percentage rate, the higher rate may be taken on the first installments collected, with adjustments to be made in accordance with the forwarding contract, to the end that the total commission on the aggregate of all installments collected shall not exceed the total commissions permitted upon such aggregate by the forwarding contract.

3.4 In cases where a collection results from the filing of a claim in probate, or in bankruptcy, receivership, assignment or other insolvency or kindred proceedings:

a. The mere filing of a claim in said proceedings and the receiving and remitting of a dividend or dividends thereon entitles the receiver to commissions in accordance with the forwarding contract, and

b. The aggregate of all dividends received from such proceeding, together with the aggregate of all collections prior to the institution of such proceeding, shall be treated as a single recovery for the purposes of applying a commission rate in accordance with the forwarding contract, and

c. The mere appearance of the receiver before the court or any officer thereof to represent such claim, there being no contest as to its validity, shall not entitle the receiver to any additional compensation; but if the receiver, in order to establish a claim filed in any of said

proceedings, is obliged to serve notices, examine witnesses, or to take other comparable steps to obtain allowance or to insure payment of the claim, or if the exigencies of the situation make it immediately necessary to perform legal services to protect the creditor's interests, the receiver shall be entitled to a reasonable fee in addition to the commissions provided for in the forwarding contract, as provided in guide 6.1.

3.5 When a claim is paid by the debtor, directly to the creditor or the forwarder, after it has arrived at the office of the receiver:

a. The receiver is entitled to commissions in accordance with the forwarding contract, if payment was made by the debtor after demand was made by the receiver. The mere technical failure of a receiver immediately to acknowledge receipt of a claim shall not operate to deprive him of his right to compensation at the agreed rate, provided he actually made demand for payment (see guide 7.1f).

b. The receiver is entitled to no compensation if payment was made by the debtor before the receiver made demand on the debtor or otherwise worked on the claim, provided notice of such direct payment is furnished the receiver by the creditor or the forwarder before work is begun or demand is made (see guides 3.6b and 7.1f).

3.6 Without limiting the rights set forth in guide 3.5, the receiver is entitled to full compensation in accordance with the forwarding contract in each of the following situations:

a. Where the receiver receives the claim and does work on it, and the debtor subsequently pays the amount of the claim to another person who had previously been employed to collect the claim.

b. Where the claim is in the hands of the receiver and either the creditor or the forwarder intervenes for the purpose of accepting a post-dated check or a promissory note, or an acceptance or other instrument from the debtor, thereupon withdrawing the claim from the hands of the receiver; and the commission shall be computed upon the face amount of the instrument so taken, and shall be payable to the receiver in full upon the taking of the instrument, the same as if money had been collected.

c. Where the receiver settles the claim by taking such an instrument from the debtor, provided that such settlement is authorized or ratified by the creditor. In such event:

(1) If the instrument remains in the hands of the receiver until maturity and collection, the receiver shall be entitled to compensation only upon the money actually collected and only when collected, but

(2) If the creditor or forwarder demands possession of the instrument, the receiver is at once entitled to full compensation computed on the face amount of the instrument, the same as if money had been collected. In the event the instrument is not paid at maturity and is returned to the receiver for collection, the employment to collect the same is a new employment, and (a) in the event of a failure to collect, the receiver shall not be required to refund the commissions previously earned, or (b) in the event of a full or partial collection, the receiver shall be entitled to full commissions computed on the amount collected, irrespective of the commission previously earned on the taking of the instrument.

d. Where a claim or judgment is compromised upon the advice or with the approval, tacit or expressed, of the receiver; but in such event, the receiver's compensation shall be computed only upon the amount actually recovered and not upon the original debt.

3.7 If portions of a claim are sent to the receiver at intervals without notice to the effect that other portions are to follow, and

a. If settlement is reached before the other portion or portions are forwarded, or

b. If the receiver is required to render separate services on the portion or portions subsequently forwarded, the subsequent forwarding shall constitute a new and separate employment. But if no settlement is reached and no separate services are required by reason of the delay, the subsequent portions shall merely increase the amount of the original claim, and the entire employment will be deemed a single employment.

3.8 A receiver is not entitled to commission in any of the following situations:

a. Where the receiver returns the claim as uncollectible, or where it has been properly withdrawn from his hands, and the debtor subsequently makes payment in full or in part to the creditor, to the forwarder, or to a subsequent receiver.

b. Where a claim is paid or settled after it arrives at the office of the receiver but before the receiver has performed any services in connection with the claim, provided the receiver is notified by the forwarder or the creditor of the payment or the settlement before work is done on the claim.

c. When the receiver reports a claim to be uncollectible without suit and the creditor chooses not to sue, and the claim is returned to the forwarder, except as provided in guide 7.1g.

### B. Interest, Costs, Attorney Fees, Etc.

4.1 Interest collected on an account or judgment is the property of the creditor, and the collection of interest must be disclosed by the receiver to the forwarder. Interest collected should be added to the principal collected for the purpose of computing the commission. However, where not in violation of the law of the forum, where monies are collected in excess of the principal, said excess shall first be allocated as a recovery of court costs, and only when costs have been recovered in full shall additional monies collected be deemed interest and subject to commission.

4.2 Court costs expended in connection with litigation and subsequently recovered from the debtor may not be added to the principal in computing the commission, and the creditor is entitled to a full return of the money advanced by him for costs when such money is collected from the debtor as part of the judgment.

4.3 Where, under local law, a plaintiff is awarded a sum in addition to his damages and costs (which sum is variously known as statutory costs, taxed fees, taxed cost, or the like), said additional sum shall be deemed to be the property of the creditor and shall be treated, for purposes of computing commissions, the same as interest, unless prohibited by law. If so prohibited, the receiver shall retain the amount so awarded and collected as his own, by way of his suit fee or on account of his suit fee, and shall compute his commission upon the collection of principal and interest only, so that the receiver will not be paid twice for his court services, once by the statutory recovery and once by the creditor.

4.4 Because an attorney's fee clause in a note is intended to reimburse the holder for expenses he incurs in the collec-

tion thereof, such a fee collected in addition to principal and interest shall be deemed to be the property of the creditor and shall be treated, for purposes of computing commissions, the same as interest, unless prohibited by law. If so prohibited, the receiver shall retain the same as his own, and shall compute his commission upon the collection of principal and interest only, and shall deduct the amount so retained from the commission computed in accordance with the commission contract.

### C. Suits and Suit Fees

5.1 The mere forwarding of a claim for collection does not warrant the commencement of suit, nor does the mere employment to collect a claim imply any authority to sue. No suit shall be commenced by any receiver unless he shall have authority from the creditor, or from the forwarder to do so.

5.2 The amount of the suit fee is a matter of contract between the receiver and the creditor, as is the question of whether the suit fee is to be contingent or non-contingent, or partly contingent and partly non-contingent. A suit fee, if earned, is payable in addition to commissions. It belongs exclusively to the receiver unless there is a division of service and responsibility between the receiver and an attorney forwarder (see guide 5.5). The suit fee agreement preferably should be entered into before suit is commenced, and the fee should be commensurate with the services rendered, the amount involved, and the results accomplished.

5.3 The mere authorization to commence suit does not entitle the receiver to charge a suit fee, and a suit fee is not earned until suit has actually been commenced by the filing of the requisite papers in court or by their delivery, as the practice may be, to a process server, constable or other properly constituted authority, for service on the defendant. The mere preparation for suit is not sufficient to justify the charging of a suit fee, but neither is it actually necessary to serve the defendant or recover a judgment against him.

5.4 When the suit fee arrangement contemplates that the suit fee will be computed as a percentage of the recovery, the percentage shall be computed on the gross amount collected by the receiver, not including the court costs expended and recovered from the defendant.

5.5 A suit fee, being compensation for legal services rendered, may not be divided between the receiver and any other person except members of his law firm; provided, that if the forwarder is also an attorney primarily engaged in the practice of law, and if there is a division of both the work and the responsibility between the attorney forwarder and the receiver, the fee may be divided between them in proportion to the efforts expended and responsibility assumed by each.

## PART IV—
## NON-CONTRACTUAL COMPENSATION

### A. Compensation in Addition to the Contract

6.1 In addition to the commissions agreed upon between the creditor (or the forwarder as agent of the creditor) and the receiver, the receiver shall be entitled to reasonable compensation in the following situations:

a. Where the receiver, in order to establish a claim filed in probate, bankruptcy, receivership or other insolvency or other kindred proceedings, is obliged to serve notices, examine witnesses, or to take other steps in an attempt to obtain allowance or to insure payment of the claim (aside from the mere filing thereof).

b. When the exigencies of any situation make it immediately neccessary to perform on behalf of the creditor legal services which would normally not be anticipated.

6.2 In all cases calling for additional compensation as set forth in guide 6.1, the receiver shall promptly advise the creditor or forwarder as agent of the creditor as to the necessity for additional compensation.

### B. Reasonable Compensation as a Substitute for Contractual Compensation

7.1 Normally, the compensation to be paid to the receiver is a matter of contract between the creditor and the receiver, but it is recognized that situations arise in good faith which are not covered by the forwarding contract and which alter the circumstances; thereby requiring a different compensation basis. In such situations, the receiver shall be reasonably compensated for the work and services actually performed, and where appropriate, for the expenses incurred. Some of such situations are described as follows:

a. Where goods or property are taken in settlement, rather than money. If this situation is not covered by the forwarding contract, the receiver's compensation shall be an amount to be determined by the reasonable worth of the services rendered, viewed from the standpoint of the work done, the amount involved, the character of the employment, and the results accomplished, whether such amount is greater or lesser than the amount as measured by the forwarding contract.

b. Where goods or property are taken in partial settlement, and money is also taken in partial settlement. In this situation, the forwarding contract controls the compensation earned upon the recovery of the money, and guide 7.1a above controls the compensation earned upon the property taken.

c. Where a claim is met by a debtor's claim of prior payment, offset, counterclaim or other similar defense, or is barred by the statute of limitations, and the receiver accepts the claim without notice of the defense and learns of the defense only in the course of his work, and where the defense is a valid one and is either accepted as valid by the creditor or is ruled valid in litigation. In this situation, the receiver is entitled to a reasonable fee on the amount so disallowed, in addition to his contract compensation on any remaining balance actually collected. But if the claim was forwarded with notice of the defense, the receiver shall not be entitled to any non-contractual compensation on the portion disallowed by reason of such defense.

d. Where a claim is disputed and the dispute is known to either the creditor or the forwarder but is not disclosed to the receiver at the time of his employment. In this situation, the receiver shall be entitled to reasonable compensation for services performed and expenses incurred by him in endeavoring to collect such claim in the event he is, by reason of such dispute, unsuccessful in the collection thereof.

e. When either the creditor or the forwarder shall improperly interfere with the efforts of the receiver and thereby prevent collection. In this situation, the receiver shall be entitled to reasonable compensation for services rendered.

f. Where a claim is paid direct to the creditor or the forwarder. In this situation, it is the duty of the forwarder to notify the receiver immediately of the fact of payment, and

(1) Where payment is made prior to the arrival of the claim in the office of the receiver, and
(a) Where such notice is given, the receiver shall be entitled to no compensation, but
(b) Where notice is not immediately given the receiver, and he does work on the claim or incurs expense before notice is received, he is entitled to reasonable compensation for work performed and expense incurred.

(2) Where payment is made after arrival of the claim in the office of the receiver, and
(a) Where such notice is given before receiver has done any work on the claim, the receiver is entitled to no compensation, but
(b) Where such notice is given after the receiver has started work on the claim or has incurred expense, the receiver is entitled to reasonable compensation for work performed and expense incurred, and
(c) Where such notice is not given until after the receiver has made a demand on the debtor, the receiver is entitled to full compensation as measured by the forwarding contract.

Where the fact of payment does not become immediately known to the forwarder through the neglect of the creditor, thereby preventing the forwarder from giving immediate notice to the receiver, this guide 7.1f shall remain applicable and fully effective.

g Where the arrangement under which the claim was referred authorized the commencement of suit, and the receiver performed services in reliance upon the creditor's good faith in that regard, and subsequently the creditor chooses not to sue. In this situation, the receiver shall be entitled to reasonable compensation for services rendered.

7.2 Because the placement of a claim with a receiver on a contingent basis vests the receiver with an interest in the claim to the extent of his contingent commission, the withdrawal of a claim for any reason (including a desire to file the claim direct in any probate, bankruptcy, receivership, insolvency or other kindred proceedings) except fault on the part of the receiver, shall entitle the receiver to reasonable compensation for services rendered.

7.3 When a claim is sent to a receiver by mistake of either the creditor or the forwarder, and the mistake or fact of prior payment has been learned by the receiver in the course of his work and by him brought to the attention of either the creditor or the forwarder, the receiver is entitled to reasonable compensation for his services.

7.4 When any neglect or failure to act on the part of a creditor or forwarder, including but not limited to the failure to give timely notice of payments received from or settlements made with a debtor, which neglect or failure results in the receiver being compelled to do work which otherwise could have been avoided and for which he will not be otherwise compensated, the receiver is entitled to reasonable compensation for services rendered.

7.5 Where suit is authorized and all requisite papers have been prepared, and the creditor fails to cooperate with the receiver, the receiver is entitled to reasonable compensation for his services.

7.6 Where suit is authorized and commenced, and the creditor fails to furnish the receiver with the evidence or testimony to substantiate the claim, or to comply with orders of the court, which failure results in the dismissal of the case or in a judgment adverse to the creditor, the receiver is entitled to reasonable compensation for his services.

7.7 Where a creditor employs two or more receivers in the same or different towns to handle the same matter, and fails to inform each of them of the dual representation, and where either of them collects the claim in whole or in part, the other is entitled to reasonable compensation for his services.

## PART V—COURT COSTS AND EXPENSES

8.1 Money advanced for court costs is a fund to be drawn upon for the purpose of paying court costs, and should be accounted for at the conclusion of the receiver's employment.

8.2 Except in cases of emergency, where the interests of the creditor might be prejudiced by delay, it shall be the duty of the receiver to consult the creditor, or the forwarder as agent of the creditor, before incurring any items of expense.

8.3 Money expended in service of process or endeavoring to serve process on defendants where suit is authorized is a legitimate expense that the creditor must pay.

## PART VI—RECEIVER'S DUTIES

9.1 A receiver shall acknowledge receipt of a claim promptly unless otherwise instructed.

9.2 If a receiver finds it impossible or impractical to handle a claim personally, it shall be his duty promptly to return the same, rather than to transfer the claim to any other party for attention. This provision, however, shall not be interpreted as prohibiting the delegation of authority by the receiver to associates, employees or clerks in his office.

9.3 A receiver shall report the fact that a claim is being collected in installments, and shall remit within a reasonable time any money so collected.

9.4 A receiver shall promptly return all papers and/or remit all moneys collected and unexpended costs, on claims that have been withdrawn because of the receiver's neglect or inability to handle the same.

9.5 Where a receiver is called upon to remit the proceeds of a collection to different and conflicting parties, he shall impound the money with some responsible depository, and shall then notify the conflicting parties that it will not be released until he is assured by both parties, by stipulation or otherwise, that the dispute has been completely adjusted.

## PART VII—RESTRICTIONS
### A. Upon Forwarders

10.1 No forwarder shall withdraw a claim from a receiver in the absence of fault on the part of the receiver, without compensating the receiver in accordance with guide 7.2.

10.2 No forwarder shall send any claim to a receiver on condition that it be handled without charge.

10.3 No forwarder shall use the name of an attorney in the assertion of rights against a third party.

10.4 No forwarder shall intentionally mail or deliver envelopes to a debtor containing a letter or a letter copy purporting to be written to an attorney, either authorizing or instructing action by the attorney against the debtor, for the purpose of deceiving the debtor into thinking that the attorney has been so authorized or instructed.

10.5 No forwarder shall use a form of notice which purports to be a summons or other writ issued by a court, for the purpose of deceiving the debtor into believing that legal action has been actually commenced, or that the communication is a court notice.

10.6 No forwarder shall place a claim with a receiver without disclosing, if such be the fact, that the claim has previously been forwarded to and worked on by another receiver.

10.7 No forwarder shall request an attorney to incur the cost of litigation without an express agreement for reimbursement by the creditor.

10.8 No forwarder shall attach more than one law list coupon to any item placed with a receiver, nor send bonding coupons to more than one law list on a single item placed with a receiver.

10.9 No forwarder shall place a claim with a receiver reserving the right to withdraw the same without payment of compensation in the event of any insolvency proceedings concerning the debtor. (See guide 7.2).

10.10 No forwarder shall himself file one or more claims in bankruptcy or other insolvency proceedings, and send one or more claims to a receiver, for the purpose of obtaining status reports from the receiver as to the progress of the proceeding.

### B. Upon Receivers

11.1 No receiver shall retain an item of business if he cannot handle it properly for any reason; except that, if the reason is an apparent conflict of interest, the receiver shall place the creditor or forwarder in full possession of all the facts or shall return the claim at once.

11.2 No receiver, having taken property or money from a debtor as settlement of a claim, may, in a controversy arising with the creditor or forwarder regarding his compensation, return the property or money to the debtor. Once the property or money is taken and received as payment of the claim, the property or money is in the constructive possession of the creditor and may not be returned without his authority.

11.3 No receiver shall charge and retain in one case the fees or costs claimed in another, where there is no authority to do so.

11.4 No receiver shall incur any item of expense, chargeable to the creditor, without the creditor's consent, except in cases of emergency where the interests of the creditor are likely to be prejudiced by delay.

11.5 No receiver may institute a suit or compromise a claim without authority of the creditor, either given directly by the creditor or by the forwarder as his agent.

11.6 A receiver having voluntarily relinquished an account should not, after giving notice to that effect to the forwarder as agent for the creditor, accept payment from the debtor; and the receiver shall not be entitled to any commissions on any payments which he does accept.

## PART VIII—ARBITRATION

12.1 Any dispute between a forwarder and a receiver may be resolved by arbitration; and if the forwarding contract incorporates these guides by reference, any dispute between the parties shall be referred to arbitration. Arbitration shall be in accordance with rules of procedure from time to time adopted by the Board of Governors pursuant to authority granted by the Constitution and By-Laws of the Commercial Law League of America.

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Senator COCHRAN. There are no other witnesses who are scheduled to testify at this hearing today. Therefore, the subcommittee will stand in recess.

[Whereupon, at 4:11 p.m., the subcommittee recessed, subject to the call of the Chair.]

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

99TH CONGRESS
1ST SESSION

# S. 209

To amend chapter 37 of title 31, United States Code, to authorize contracts retaining private counsel to furnish collection services in the case of indebtedness owed the United States.

IN THE SENATE OF THE UNITED STATES

JANUARY 21, 1985

Mr. D'AMATO introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

# A BILL

To amend chapter 37 of title 31, United States Code, to authorize contracts retaining private counsel to furnish collection services in the case of indebtedness owed the United States.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "Federal Debt Recovery Act of 1985".

SEC. 2. Section 3718 of title 31, United States Code, is amended—

(1) by striking out subsection (d);

(2) by redesignating subsections (b) and (c) as subsections (d) and (e), respectively;

(3) in subsection (d), as redesignated by paragraph (2), by inserting "or (b)" after "subsection (a)";

(4) in subsection (e), as redesignated by paragraph (2), by striking out "(b)" and inserting in lieu thereof "(d)"; and

(5) by inserting after subsection (a) the following new subsection:

"(b)(1) The Attorney General may make contracts retaining private counsel to furnish legal services, including representation in negotiation, compromise, settlement, and litigation, in the case of any claim of indebtedness owed the United States. If the Attorney General makes a contract for legal services to be furnished in any judicial district of the United States under the first sentence, the Attorney General shall use his best efforts to retain, from among attorneys regularly engaged in the private practice of law in such district, more than one private counsel to furnish such legal services in such district. Each such contract shall include such terms and conditions as the Attorney General considers necessary and appropriate, including a provision specifying the amount of the fee to be paid to the private counsel under such contract or the method for calculating that fee. The amount of the fee payable for legal services furnished under any such

contract may not exceed the fee that counsel engaged in the private practice of law in the area or areas where the legal services are furnished typically charge clients for furnishing legal services in the collection of claims of indebtedness, as determined by the Attorney General, considering the amount, age, and nature of the indebtedness and whether the debtor is an individual or a business entity.

"(2) The head of an executive or legislative agency may refer to a private counsel retained under paragraph (1) of this subsection claims of indebtedness owed the United States arising out of activities of that agency.

"(3) Notwithstanding sections 516, 518(b), 519, and 547(2) of title 28, a private counsel retained under paragraph (1) of this subsection may represent the United States in litigation in connection with legal services furnished pursuant to the contract entered into with that counsel under paragraph (1) of this subsection.

"(4) A contract made with a private counsel under paragraph (1) of this subsection shall include—

"(A) a provision permitting the Attorney General to terminate the contract if the Attorney General finds that termination of the contract is in the public interest;

"(B) a provision permitting the Attorney General to have any claim referred under the contract returned

to the Attorney General if the Attorney General finds such action to be in the public interest;

"(C) a provision permitting the head of any executive or legislative agency which refers a claim under the contract to resolve a dispute regarding the claim, to compromise the claim, or to terminate a collection action on the claim; and

"(D) a provision requiring the private counsel to transmit monthly to the Attorney General and the head of the executive or legislative agency referring a claim under the contract a report on the services relating to the claim rendered under the contract during the month and the progress made during the month in collecting the claim under the contract.

"(5) Notwithstanding the fourth sentence of section 803(6) of the Fair Debt Collection Practices Act (15 U.S.C. 1692a(6)), a private counsel performing legal services pursuant to a contract made under paragraph (1) of this subsection shall be considered a debt collector for the purposes of such Act.

"(c)(1) The Attorney General shall transmit to the Congress an annual report on the activities of the Department of Justice to recover indebtedness owed the United States which was referred to the Department of Justice for collection. Each such report shall include a list, by agency, of the

total number and amounts of collected and uncollected claims of indebtedness which were referred to the Department of Justice for collection, shall separately specify any uncollected claim of indebtedness which was covered by a contract (A) which was terminated by the Attorney General under subsection (b)(4)(A) of this section or (B) under which the claim was returned to the Attorney General under subsection (b)(4)(B) of this section, and shall describe the progress made by the Department of Justice in collecting uncollected claims of indebtedness during the one-year period covered by the report.

"(2)(A) The Comptroller General of the United States shall carry out an annual audit of the actions taken by the Attorney General under subsection (b) of this section during the preceding twelve months. The Comptroller General shall determine the extent to which there is competition among private counsel to obtain contracts awarded under such subsection, the reasonableness of the fees provided in such contracts, the diligence and efforts of the Attorney General to retain counsel in accordance with the provisions of this section, and the results of the debt collection efforts of private counsel retained under such contracts.

"(B) After completing each audit under subparagraph (A), the Comptroller General shall transmit to the Congress a report on the findings and conclusions resulting from the audit.".

SEC. 3. Not later than sixty days after the date of enactment of this Act, the Attorney General of the United States shall transmit to the Congress a report on the actions taken under section 3718(b) of title 31, United States Code (as added by paragraph (5) of section 2 of this Act).

STATEMENT OF

H. WILLIAM ALLEN, CHAIRMAN
NATIONAL CONFERENCE GROUPS

and

JOSEPH PATCHAN, CHAIRMAN
NATIONAL CONFERENCE ON LAWYERS
AND COLLECTION AGENCIES

submitted to the

SUBCOMMITTEE ON ENERGY, NUCLEAR
PROLIFERATION AND GOVERNMENT PROCESSES

COMMITTEE ON GOVERNMENTAL AFFAIRS

UNITED STATES SENATE

concerning

# S.209, LEGISLATION TO AUTHORIZE PRIVATE COUNSEL TO FURNISH COLLECTION SERVICES FOR DEBTS OWED THE U.S. GOVERNMENT

October 9, 1985

Mr. Chairman and Member of the Subcommittee:

We appreciate the opportunity to submit this statement to you on behalf of the American Bar Association. We are H. William Allen, Chairman of the ABA's National Conference Groups and Joseph Patchan, Chairman of the ABA's National Conference on Lawyers and Collection Agencies. On behalf of the Association, we urge speedy enactment of S.209. This bill authorizes contracts retaining private counsel to furnish collection services, including representation and negotiation, compromise, settlement and litigation, in cases of any claim or indebtedness owed the U.S.

The Association believes this legislation is necessary in order to: 1) avoid a major increase in the number of U.S. Attorneys who may have to be engaged for the purpose of furnishing legal collection services to the United States, (2) obtain the best results for the United States through specialized and qualified counsel experienced in the area, and (3) achieve the economics effected through utilization of the private sector. Because of this, in August, 1984 the Association's House of Delegates adopted a resolution that provides as follows:

> Resolved, that the American Bar Association supports federal legislation amending Chapter 37 of Title 31, United States Code, to authorize contracts by appropriate federal agencies retaining private counsel to furnish collection services in the case of indebtedness owed the United States.

The Debt Collection Act enacted in 1982 amended the Federal Claims Act to give federal agencies authority to contract with private collection services for the collection of debts due to the U.S. An amendment signed by the President in November, 1983, authorized handling claims on a contingency basis.

The enactment of S.209 should significantly speed up the federal debt collection process by eliminating the time lost between the collection agency efforts and the subsequent return and prosecution of the debt collection by the U.S. Attorneys. Thus, the proposed legislation would eliminate the loss of millions of dollars per day due to expiring statutes of limitations. Without the prompt ability to sue to collect these debts, collection agency efforts are seriously hampered in their effectiveness. The proposed legislation will permit the placement of federal debt litigation with attorneys who have recognized legal abilities in this area of the law and who practice in the geographical area where the debtor is located.

Authorization for retention of private attorneys to collect debts due the U.S. would increase payments by debtors, would maximize recoveries, and would substantially reduce the billions of dollars owed in public debt.

We believe that those who testified at your September 26, 1985 hearings have demonstrated the crucial need for enactment of legislation such as S.209. We commend you for holding these hearings and strongly urge the speedy enactment of the proposed legislation.

**Dun & Bradstreet**
**Commercial Collections**

a company of
The Dun & Bradstreet Corporation

Frank L. Uhlman
President

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October 15, 1985

Honorable Thad Cochran
326 Senate Russell Office Building
Washington, D.C. 20510

Dear Senator Cochran:

The bills relating to debt collection (S. 1658 and S. 209) which are under consideration by your Subcommittee both point the way to increased efficiency in the Federal debt collection process by allowing the Attorney General to engage private attorneys in collection efforts. As a company that for 144 years has been involved in a major way in commercial credit reporting and debt collection, we strongly support this purpose and goal. At the same time the bills may have an unintended and undesirable result.

The unintended result of both bills may be to establish Federal debt collection procedures which fail to give Federal agencies access to long established and beneficial private sector practices. In the great majority of cases the creditor places overdue debts with a debt collection agency for resolution. The agency utilizes a variety of procedures, including negotiations leading to compromise or settlement, to secure repayment in full or in part as the facts of each case seem to justify. If the agency is unable to resolve the matter satisfactorily, it will -- with the approval of the creditor -- place the matter with a law firm for the purpose of bringing legal action. In addition to the placing of accounts with attorneys, the agency also provides account followup services on behalf of the creditor which relieve the creditor of substantial time and other cost burdens. This is the way most, but not all, private debt collection is handled for commercial creditors. In some cases the creditor itself will handle the entire process; in others the creditor will handle all the non-legal steps; and in still others the creditor will assign the entire matter directly to a law firm with no commercial agency participation. We repeat, however, the majority practice is to utilize the services of commercial debt collection agencies.

It is not accidental that private sector debt collection has developed in this way. Among the important contributing reasons are the following:

1. Experience establishes that the most frequently used procedure, involving a commercial collection agency and referral to a law firm for litigation if necessary, brings about the best collection result in the most efficient way.

2. Collection agencies have developed a variety of specialized resources involving methods, people and data which are necessary to handle the job well. Few law firms have such resources and most are not eager to acquire them, realizing as they do that the non-litigation part of the collection process is really not a legal matter.

3. Creditors realize that litigation should be undertaken only after all else has failed and not always even in that circumstance.

The two bills, as well as the Debt Collection Act of 1982, fail to take into account this long history of private sector procedures. In order to rectify this defect and to maximize the efficiency of Federal debt collection efforts we urge the Subcommittee to amend the Federal Debt Collection Act of 1982 as follows:

- to allow debt collection agencies engaged by Federal agencies to have the same authority that S. 1658 confers on private attorneys in the pre-litigation phase of the debt collection process to engage in "negotiation, compromise (and) settlement" of the referred claim with the debtor; and

- to enable such debt collection agencies to refer claims under appropriate circumstances to private attorneys approved by the Attorney General.

Public policy relating to Federal debt collection should emphasize, not ignore, the informal resolution mechanisms so much a part of collection agency procedures. After all, debtors who owe money to the government are more than customers, past or potential. They are taxpayers, citizens and, in the case of individuals, voters. It is their government. This fact does

not mean that their debts should be forgiven, but it does mean that collection procedures should be carefully designed so as to encourage informal resolution and minimize the use of litigation.

Many of the above points were alluded to in the testimony of several collection agency witnesses including that of Mr. Emil Hartleb, Vice President of Dun & Bradstreet Commercial Collections. I hope the above discussion appropriately amplifies those observations and that the Subcommittee will act favorably on the amendments we have proposed to the Federal Debt Collection Act of 1982.

It will be appreciated if this letter is made part of the record.

Sincerely,

DUN & BRADSTREET
COMMERCIAL COLLECTIONS

By: _____
Frank L. Uhlman
President